

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:
NATIONAL PRESCRIPTION
OPIATE LITIGATION

CASE TRACK THREE

Case No. 1:17-md-2804
Cleveland, Ohio

November 9, 2021
9:00 A.M.

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VOLUME 26

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS,
BEFORE THE HONORABLE DAN A. POLSTER,
UNITED STATES DISTRICT JUDGE,
AND A JURY.

- - - - -

Official Court Reporter: Heather K. Newman, RMR, CRR
7-189 U.S. Court House
801 West Superior Avenue
Cleveland, Ohio 44113
216-357-7035

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1 APPEARANCES:

2 For the Plaintiffs:

Peter H. Weinberger, Esq.
Spangenberg, Shibley & Liber
1001 Lakeside Avenue, Ste. 1700
1900 East Ninth Street
Cleveland, Ohio 44114
216-696-3232

W. Mark Lanier, Esq.
Rachel Lanier, Esq.
M. Michelle Carreras, Esq.
The Lanier Law Firm
6810 FM 1960 West
Houston, Texas 77069
813-659-5200

Frank L. Gallucci, III, Esq.
Plevin & Gallucci Company, LPA
The Illuminating Building
Suite 2222
55 Public Square
Cleveland, Ohio 44113
216-861-0804

Salvatore C. Badala, Esq.
Maria Fleming, Esq.
Napoli Shkolnik
360 Lexington Ave., 11th Floor
New York, New York 10017
212-397-1000

16 For Walgreen Defendants:

Kaspar J. Stoffelmayr, Esq.
Brian C. Swanson, Esq.
Katherine M. Swift, Esq.
Alex Harris, Esq.
Sharon Desh, Esq.
Bartlit Beck LLP
54 West Hubbard Street, Ste.300
Chicago, Illinois 60654
312-494-4400

21 For CVS Defendants:

Graeme W. Bush, Esq.
Eric R. Delinsky, Esq.
Alexandra W. Miller, Esq.
Paul B. Hynes, Jr., Esq.
Zuckerman Spaeder - Washington
Suite 1000
1800 M Street, NW
Washington, DC 20036
202-778-1831

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For Walmart Defendants: John M. Majoras, Esq.
Jones Day - Columbus
Suite 600
325 John H. McConnell Blvd.
Columbus, Ohio 43215
614-281-3835

Tara A. Fumerton, Esq.
Tina M. Tabacchi, Esq.
Jones Day - Chicago
Suite 3500
77 West Wacker
Chicago, Illinois 60601
312-782-3939

ALSO PRESENT: Special Master David Cohen

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08:28:59 1 Tuesday Session, November 9th, 2021, at 9:00 A.M.

08:51:50 2 COURTROOM DEPUTY: All rise.

08:51:55 3 THE COURT: Okay. Good morning, everyone.
08:51:57 4 Please be seated.

08:52:00 5 MR. LANIER: Good morning, Judge.

08:52:10 6 THE COURT: All right.

08:52:11 7 I guess we got a few minutes before 9:00. We can
08:52:14 8 start working on the exhibits.

08:52:16 9 Someone handed up to me a few exhibits I guess the
08:52:20 10 plaintiffs are offering with Mr. Cook and Ms. Militello. I
08:52:33 11 guess we'll start with Mr. Cook.

08:52:38 12 MS. MILLER: Your Honor, Sasha Miller for CVS.

08:52:40 13 We object to all four of the exhibits that are being
08:52:42 14 offered by plaintiffs. They were not disclosed the night
08:52:45 15 before and they were also not on their exhibit list.

08:52:49 16 THE COURT: Well.

08:52:53 17 MS. MILLER: And we have more substantive
08:52:54 18 objections, but --

08:52:55 19 THE COURT: Well --

08:52:56 20 MR. WEINBERGER: We weren't required to
08:52:58 21 disclose those.

08:52:58 22 THE COURT: Right. It was cross-examination.

08:53:01 23 MS. MILLER: No, but they're required to be on
08:53:04 24 your exhibit list for cross and if they're not, you're
08:53:07 25 supposed to disclose them by 7:00 p.m. the night before

08:53:10 1 under the revised case management order for Track 3.

08:53:12 2 THE COURT: All right.

08:53:13 3 Well, that's a problem.

08:53:17 4 MR. WEINBERGER: We'll look at it, Your Honor,
08:53:18 5 and answer it.

08:53:20 6 THE COURT: All right. If that's the case,
08:53:20 7 then we're stuck with that.

08:53:21 8 What about -- is it the same for Militello? Were
08:53:24 9 these disclosed?

08:53:25 10 MS. FUMERTON: Your Honor, we have different
08:53:27 11 issues with Militello. We object to all but the very last
08:53:29 12 one. And we also have some we are seeking to admit.

08:53:33 13 THE COURT: Well, let's just deal with -- all
08:53:35 14 right.

08:53:37 15 MS. MILLER: And, Your Honor, before we move
08:53:38 16 to Militello, we are offering four exhibits for Cook.

08:53:42 17 THE COURT: Well, I may not -- we will see.
08:53:45 18 Do you have them? Have you given them to plaintiffs?

08:53:49 19 MR. WEINBERGER: We have no objection to all
08:53:55 20 four.

08:53:55 21 THE COURT: Well, let's see those and we'll
08:53:57 22 put those in.

08:53:59 23 MS. MILLER: We'll bring them up in a minute,
08:54:01 24 Your Honor.

08:54:21 25 THE COURT: All right.

08:54:22 1 These are coming in without objection, CVS 04243,
08:54:31 2 04385, 04387, and 04400.

08:54:53 3 And then I'll put aside the ones that the plaintiffs
08:54:58 4 are offering to see if they were properly designated.

08:55:01 5 MR. WEINBERGER: So, Your Honor, I do have the
08:55:02 6 answer to that. These exhibits were not on our exhibit
08:55:07 7 list, but I will say that this pharmacist was not disclosed
08:55:14 8 to us until, I don't know, the day before.

08:55:20 9 MS. MILLER: No, that's not true, Pete.

08:55:22 10 MR. WEINBERGER: I mean in terms of his being
08:55:24 11 a witness in this case.

08:55:25 12 MS. MILLER: That's not true.

08:55:27 13 MR. DELINSKY: Yeah, I think he was on our
08:55:28 14 witness list way back in June.

08:55:31 15 THE COURT: There's hundreds of people on the
08:55:33 16 witness list in June.

08:55:34 17 MR. WEINBERGER: I mean in terms of the fact
08:55:35 18 that you were going to call this particular pharmacist of
08:55:37 19 your significant list of others --

08:55:40 20 MR. DELINSKY: No, he was on our list of 50
08:55:42 21 that the Court ordered, among all four defendants.

08:55:46 22 So I believe, if I'm not wrong, he was one of two
08:55:50 23 pharmacists on our list that was disclosed in June and July.
08:55:55 24 And there were only seven CVS witnesses on that list.

08:56:04 25 THE COURT: Well, if the documents weren't

08:56:07 1 properly disclosed, I can't admit them. All right.

08:56:09 2 With -- all right. The plaintiffs are offering the
08:56:14 3 following four for Militello, 17572 National BRTF list,
08:56:23 4 doctor 2011 prescriber comments.

08:56:26 5 Any objection to that?

08:56:27 6 MS. FUMERTON: Yes, Your Honor.

08:56:28 7 They didn't establish any foundation that Ms.
08:56:31 8 Militello had seen that list or that those comments were her
08:56:33 9 or if she even knew who submitted those comments. In fact,
08:56:37 10 she said she didn't know.

08:56:39 11 THE COURT: Well, they were at her pharmacy
08:56:40 12 while she was there so it's someone at the same time, so
08:56:43 13 that can come in.

08:56:44 14 MS. FUMERTON: Well, Your Honor --

08:56:46 15 THE COURT: It's her pharmacy, and she's there
08:56:49 16 at the same time, so it's --

08:56:51 17 MR. WEINBERGER: And it's their --

08:56:52 18 THE COURT: -- one of the people working with
08:56:54 19 her.

08:56:54 20 MR. WEINBERGER: And it's their document.

08:56:56 21 MS. FUMERTON: Well, okay.

08:56:57 22 But, Your Honor, at the very least, only the excerpt
08:56:59 23 should be admitted and not the entirety of the list because
08:57:01 24 the entirety of the list is not limited to her store. It,
08:57:05 25 in fact, has all of the stores nationwide.

08:57:08 1 MR. WEINBERGER: Well --

08:57:09 2 THE COURT: I assume the plaintiffs are only
08:57:11 3 offering the portion that they used with her; is that right?

08:57:13 4 MR. WEINBERGER: Right.

08:57:14 5 THE COURT: All right. So excerpt, excerpt
08:57:18 6 it. All right.

08:57:20 7 Then 21391, Trevor Levin OARRS report.

08:57:24 8 MS. FUMERTON: Your Honor, same issue.

08:57:26 9 There's no foundation. She said that was not her
08:57:28 10 handwriting, and it was not her refusal to fill.

08:57:30 11 THE COURT: Well, again, it was done at her
08:57:31 12 pharmacy while she's there. So that can come in.

08:57:39 13 And then 20889, e-mail about the Over 20 Report.

08:57:43 14 MS. FUMERTON: So, Your Honor, multiple issues
08:57:45 15 on this one. She's not on the e-mail.

08:57:47 16 THE COURT: Let me see this document. I don't
08:57:49 17 remember it very well.

08:57:52 18 MS. FUMERTON: It's also a
08:57:53 19 distribution-related document.

08:58:02 20 MR. WEINBERGER: Yeah, this is the
08:58:04 21 distribution document involving her stores on the over --

08:58:07 22 THE COURT: Yeah, I recall this.

08:58:08 23 MS. FUMERTON: But, Your Honor, the
08:58:09 24 distribution process was different. In fact, Jeff Abernathy
08:58:14 25 was someone they were going to play the deposition for and

08:58:16 1 chose not to.

08:58:17 2 THE COURT: Well, I'm going to let this in
08:58:19 3 over objection.

08:58:20 4 MS. FUMERTON: Well, Your Honor, just to push
08:58:20 5 that point a little more on this one.

08:58:21 6 She had no knowledge of any of this and it relates to
08:58:24 7 distribution, which is --

08:58:24 8 THE COURT: Well, again, that's the point,
08:58:26 9 that she had no knowledge. That's why they're putting it
08:58:29 10 in. They're arguing that she should have knowledge.

08:58:32 11 MS. FUMERTON: No, no, no. She shouldn't
08:58:34 12 have, Your Honor, because it's a distribution-related issue.

08:58:37 13 THE COURT: Well, maybe, maybe not. So I'm
08:58:37 14 admitting this over objection.

08:58:40 15 MS. FUMERTON: Even though it's going to be
08:58:40 16 confusing to the jury since this will be the only
08:58:43 17 distribution-related document?

08:58:43 18 THE COURT: Yes. All right.

08:58:44 19 P26767A, e-mail about forged or fraudulent
08:58:49 20 prescriptions. Any objection to that?

08:58:51 21 MS. FUMERTON: No, Your Honor.

08:58:52 22 THE COURT: Okay. That can come in.

08:58:53 23 All right. Do the defendants have anything with Ms.
08:58:55 24 Militello?

08:58:55 25 MS. FUMERTON: Yes, Your Honor. May I

08:58:57 1 approach?

08:58:58 2 THE COURT: All right.

08:58:59 3 MS. FUMERTON: We sent this to plaintiffs. I
08:59:01 4 don't know if they have objections or not.

08:59:08 5 MR. WEINBERGER: Did you send these to us last
08:59:09 6 night?

08:59:10 7 MS. FUMERTON: No. We sent them this morning,
08:59:12 8 but they're just the three prescriptions that were used with
08:59:14 9 her.

08:59:20 10 MR. WEINBERGER: We have no objection to them.

08:59:21 11 THE COURT: All right.

08:59:21 12 These three can come in without objection. They're
08:59:25 13 Walmart exhibits. . . I can't quite understand this exhibit
08:59:33 14 labeling but 01343-0963, 01343-0110, and 01343-0501.

08:59:51 15 MS. FUMERTON: Thank you, Your Honor.

08:59:52 16 I'll just note the first two are two-page documents:
08:59:55 17 And the last one's a one-page document for the record.

08:59:57 18 Before we leave Ms. Militello, there's also another
08:59:59 19 issue that we wanted to raise that we were very concerned
09:00:01 20 about yesterday.

09:00:03 21 Mr. Lanier, towards the very end of the questioning,
09:00:05 22 asked several questions of Ms. Militello where she had no
09:00:10 23 knowledge of it and, in fact, we don't think that he had a:
09:00:13 24 Good faith basis for asking them.

09:00:15 25 So, specifically, he asked her, "So while you were

09:00:18 1 working at Eastlake, nobody ever told you that y'all had one
09:00:22 2 of the highest volume oxy stores in the country?"

09:00:25 3 And she said no.

09:00:27 4 We don't think he had a good faith basis for that. In
09:00:30 5 fact, this is one of the smallest stores in the country --

09:00:33 6 THE COURT: Well, I assume he had accurate --

09:00:38 7 MR. LANIER: I did, Your Honor. They were one
09:00:39 8 of the over 20 stores over and over again.

09:00:41 9 There was over 20 stores by definition were the high
09:00:45 10 stores that were isolated out.

09:00:47 11 MS. FUMERTON: And actually, see, Your Honor,
09:00:49 12 this is actually in part the problem with letting that
09:00:51 13 document into evidence.

09:00:52 14 There's been no discussion in this case about what
09:00:54 15 over 20 means. And Mr. Lanier just has it completely wrong.
09:00:57 16 That's not what over 20 means.

09:00:59 17 MR. LANIER: Well, that was part of the
09:01:00 18 discussion of what over 20 means, but there's certainly a
09:01:03 19 ton of documents I can show the Court that this is fully in
09:01:05 20 good faith because the over 20 stores were the ones that
09:01:09 21 were getting too much of the product, and it was an issue
09:01:12 22 within the company.

09:01:13 23 MS. FUMERTON: No.

09:01:14 24 This, again -- Your Honor, this is the problem having
09:01:16 25 this distribution discussion at this point in the stage.

09:01:18 1 There was, for a short period of time, a program
09:01:20 2 within Walmart --

09:01:21 3 THE COURT: You want to bring in another
09:01:23 4 witness or bring her back, fine, and clarify it. You know,
09:01:26 5 there's nothing more that can be done about it.

09:01:29 6 MS. FUMERTON: But, Your Honor, she -- they
09:01:32 7 deposed her.

09:01:33 8 THE COURT: She's off. Okay. I mean, she's
09:01:36 9 no longer on the stand. What do you --

09:01:39 10 MS. FUMERTON: We would just request that the
09:01:40 11 question be stricken -- stricken.

09:01:46 12 We just think it's fundamentally unfair when
09:01:49 13 Mr. Lanier repeatedly stands up over and over again and make
09:01:51 14 statements to the jury where the witness says no and has no
09:01:53 15 good faith basis for asking them.

09:01:54 16 THE COURT: Well, he said he has a good faith
09:01:57 17 basis.

09:01:57 18 MR. LANIER: I have a good faith basis and I
09:01:59 19 had the documents ready to go if she wanted to challenge me
09:02:01 20 on it at all, and I would have produced those documents to
09:02:03 21 her to impeach her.

09:02:05 22 THE COURT: He asked two questions and the
09:02:06 23 witness said I don't know anything about it and that was it.

09:02:08 24 MS. FUMERTON: Actually, she said no. She
09:02:10 25 didn't even say I don't know. She said no, it's not. And

09:02:12 1 he just said --

09:02:12 2 THE COURT: Well, all right. Then she denied
09:02:14 3 it. So it's even better. I mean, she denied it, so it's --
09:02:18 4 you know, the only testimony is no. That's not the case.

09:02:24 5 MS. FUMERTON: Well --

09:02:25 6 THE COURT: The jury heard that it's not the
09:02:26 7 case.

09:02:27 8 MS. FUMERTON: That's what she -- but by
09:02:31 9 implication, and as Mr. Lanier just said, if she had
09:02:32 10 challenged him, he had a ton of documents he was going to
09:02:35 11 use.

09:02:35 12 She challenged him, he did not use a single document
09:02:37 13 because the over-20 process is a distribution-related
09:02:40 14 process she would have no involvement in as a pharmacist.

09:02:46 15 That's what was reflected on the e-mail that was just
09:02:48 16 admitted. She's not anywhere on the e-mail because there
09:02:51 17 was a different function and a different arm within Walmart
09:02:53 18 that handled the distribution-related issues.

09:02:56 19 MR. LANIER: Then she got off --

09:02:57 20 THE COURT: Hold it.

09:02:58 21 Mr. Lanier said he had a good faith basis to ask the
09:03:01 22 question. All right? The witness said he's wrong. All
09:03:05 23 right? So the jury heard that the witness believes that --
09:03:10 24 the premise of Mr. Lanier's premise was incorrect, that he
09:03:13 25 was wrong. So they've heard that.

09:03:15 1 So, I mean, you want me to disregard her answer?

09:03:19 2 That's, you know. . . you got the answer that you wanted.

09:03:28 3 All right. So we'll have to come back --

09:03:30 4 MR. WEINBERGER: Your Honor --

09:03:31 5 THE COURT: Hold it.

09:03:32 6 MR. WEINBERGER: Sorry.

09:03:33 7 THE COURT: We're going to come back to Cook,
09:03:35 8 I guess.

09:03:35 9 MR. WEINBERGER: Well, I do want to -- that's
09:03:37 10 what I wanted to address.

09:03:38 11 THE COURT: All right.

09:03:38 12 MR. WEINBERGER: I'm looking at the joint
09:03:40 13 trial exhibits stipulation, Page 6, cross-examination
09:03:47 14 documents.

09:03:48 15 The parties must include on their exhibit lists all
09:03:51 16 exhibits they intend to use on cross-examination, other than
09:03:56 17 for purposes of impeachment or rebuttal.

09:04:01 18 So I would submit to you that each of these exhibits
09:04:04 19 that we utilized were impeachment exhibits with respect to
09:04:10 20 Mr. Cook.

09:04:13 21 MS. MILLER: Your Honor, those were not used
09:04:16 22 for impeachment. He had not -- three of those exhibits
09:04:20 23 related to theft and loss reports. He did not touch on any
09:04:24 24 of those issues. And previously, in fact --

09:04:27 25 THE COURT: Yeah, I don't think these were

09:04:29 1 impeachment documents. So --

09:04:35 2 MR. WEINBERGER: Right.

09:04:36 3 He had testified that there weren't any bad
09:04:38 4 pharmacists at his stores and these documents were used to
09:04:42 5 impeach that testimony.

09:04:48 6 MS. MILLER: Your Honor, his testimony was,
09:04:49 7 first of all, more nuanced than that. And he was not
09:04:54 8 getting into the -- any details of the operations. These
09:04:57 9 were high-level questions by Mr. Lanier.

09:05:00 10 And furthermore, previously, Your Honor has stated
09:05:03 11 that theft and loss is not at issue in the case. The
09:05:06 12 testimony is what the testimony was. The jury heard it, but
09:05:10 13 we think that it's improper to admit these exhibits,
09:05:13 14 especially given these disclosure limitations and your prior
09:05:16 15 orders.

09:05:16 16 MR. WEINBERGER: Well, whether or not there's
09:05:18 17 proper inventory control is a pharmacist issue.

09:05:20 18 THE COURT: Yeah, I agree.

09:05:21 19 It came in. I allowed the questions. They weren't
09:05:24 20 objected to. All right. I'll. . . all right.

09:05:30 21 I'm going to admit those three: 21936, 21937, 21938.
09:05:36 22 I'll admit those over objection.

09:05:39 23 MS. MILLER: Your Honor, there's a --

09:05:40 24 THE COURT: What about the personnel file?
09:05:44 25 Kenneth Cook reviews.

09:05:44 1 MS. MILLER: Yeah, that's where I was moving
09:05:46 2 to next, Your Honor.

09:05:47 3 Mr. Lanier used just one page from that.

09:05:52 4 MR. WEINBERGER: Withdrawn.

09:05:53 5 THE COURT: Well, that's the only page that --

09:05:55 6 MR. LANIER: We're fine with that, Your Honor.
09:05:57 7 We'll redact accordingly.

09:05:59 8 THE COURT: All right. So that page can come
09:06:02 9 in. So work on that. All right.

09:06:04 10 That takes care of Cook and Militello.

09:06:08 11 Are there any exhibits that people are offering with
09:06:15 12 the two depositions, Ashley and Mack?

09:06:17 13 MS. SWIFT: Your Honor, Kate Swift for
09:06:20 14 Walgreens.

09:06:20 15 Just one with Ms. Ashley's testimony. We shared it
09:06:24 16 with plaintiffs last night. I don't know that there's any
09:06:27 17 objection.

09:06:27 18 MR. WEINBERGER: No objection.

09:06:29 19 MS. SWIFT: Thank you, Pete. It's
09:06:38 20 DEF-MDL-10875.

09:06:41 21 THE COURT: Okay. That can be admitted
09:06:43 22 without objection.

09:06:44 23 Anything from the plaintiffs on Ashley?

09:06:49 24 MR. WEINBERGER: No, Your Honor.

09:06:50 25 THE COURT: Okay. And then from Ms. Mack?

09:06:58 1 MS. FUMERTON: No, Your Honor.

09:06:59 2 THE COURT: And I take it none from the
09:07:01 3 plaintiffs?

09:07:01 4 MR. WEINBERGER: Correct, Your Honor.

09:07:02 5 THE COURT: Okay. Good. So we're all set.

09:07:04 6 We'll just take up Ms. Stossel at the end of her
09:07:10 7 testimony. Okay.

09:07:15 8 I think we can bring her in then. Thank you.

09:08:08 9 (Brief pause in proceedings)

09:09:06 10 (Jury returned to courtroom at 9:09 a.m.)

09:09:27 11 THE COURT: Okay. Good morning, ladies and
09:09:30 12 gentlemen. Please be seated.

09:09:31 13 Ms. Stossel, you are still under oath from yesterday,
09:09:36 14 please. And, Mr. Stoffelmayr, you may continue.

09:09:38 15 MR. STOFFELMAYR: Thank you, Judge.

09:09:39 16 Good morning, everybody.

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Stossel - Direct/Stoffelmayer

09:09:39 1 DIRECT EXAMINATION OF AMY STOSSEL

09:09:39 2 BY MR. STOFFELMAYR:

09:09:42 3 **Q** Good morning, Ms. Stossel. Welcome back.

09:09:44 4 **A** Hi.

09:10:01 5 **Q** So, Ms. Stossel, where we left off, we were at
09:10:03 6 number -- I think about to start topic four on my outline
09:10:08 7 here.

09:10:08 8 Did you help us put together some slides to describe
09:10:12 9 how dispensing works in real life for a pharmacist?

09:10:16 10 **A** Yes.

09:10:16 11 **Q** All right. I'm going to show you one of those slides.
09:10:20 12 Is this one of the slides you helped us put together?

09:10:24 13 MR. LANIER: No.

09:10:27 14 MR. STOFFELMAYR: Am I looking at the wrong
09:10:28 15 one?

09:10:30 16 THE WITNESS: This is just still our list,
09:10:33 17 so --

09:10:33 18 BY MR. STOFFELMAYR:

09:10:34 19 **Q** Actually, it's a different list, Steps to Fill a
09:10:37 20 Controlled Substance.

09:10:38 21 **A** Oh, yes.

09:10:39 22 **Q** It's not the kind of agenda list. It's steps that you
09:10:43 23 go through; correct?

09:10:44 24 So I want to go through these with you and explain
09:10:47 25 them. But first off, the jury's heard a little bit about

Stossel - Direct/Stoffelmayr

09:10:51 1 pharmacy technicians vs. pharmacists.

09:10:54 2 At the pharmacies that you work at, do you have
09:10:56 3 technicians as well as pharmacists?

09:10:58 4 **A** I do.

09:10:58 5 **Q** And we're going to go through some of the things that
09:11:01 6 a technician and some of the things that only a pharmacist
09:11:05 7 can do, but bottom line, at the end of day, who makes the
09:11:08 8 decision whether to dispense a controlled substance?

09:11:10 9 **A** A pharmacist.

09:11:10 10 **Q** Can a technician ever make that decision without a
09:11:18 11 pharmacist involved?

09:11:19 12 **A** No.

09:11:19 13 **Q** Ever?

09:11:19 14 **A** No. Never.

09:11:20 15 **Q** All right.

09:11:21 16 First up, how do you, this day and age, how does the
09:11:26 17 pharmacy usually get the prescription to start with?

09:11:27 18 **A** So, in one of two ways: Either by the patient
09:11:30 19 bringing in a piece of paper, which is what we call a hard
09:11:36 20 copy prescription that they get from the doctor's office.
09:11:41 21 So that's one way.

09:11:42 22 The second way is an electronic prescription that the
09:11:46 23 doctor's office sends via computer directly to the pharmacy.

09:11:51 24 **Q** Okay.

09:11:52 25 First step you have is data entry. Can you describe

Stossel - Direct/Stoffelmayr

09:11:54 1 for the jurors what that means?

09:11:57 2 **A** Sure.

09:11:58 3 So data entry, on the list, it says, "Data entry by
09:12:04 4 pharmacy tech or pharmacist." So data entry would be when
09:12:08 5 that prescription is brought into the pharmacy, either the
09:12:12 6 piece of paper or the prescription that's received
09:12:16 7 electronically, that information has to be then transcribed
09:12:25 8 into the computer. So we would either scan the actual piece
09:12:30 9 of paper into the computer system or we would begin with
09:12:36 10 that electronic prescription.

09:12:39 11 And we would actually have to type the directions that
09:12:41 12 we see on the piece of paper or the electronic image into
09:12:46 13 your computer system. So that's data entry.

09:12:49 14 **Q** And it says, "By pharmacy technician or pharmacist."
09:12:56 15 So can either one do that?

09:12:57 16 **A** Right. So either the technician or the pharmacist can
09:13:00 17 complete that task.

09:13:01 18 **Q** If the patient has been to a Walgreens before, will
09:13:03 19 the system already have basic information about that person?

09:13:06 20 **A** Yes.

09:13:07 21 The system will have the patient information already
09:13:10 22 but not the prescription information that they're bringing
09:13:13 23 in.

09:13:14 24 **Q** And if that's a doctor that a Walgreens has already
09:13:17 25 filled a prescription for, will there be information about

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09:13:20 1 the doctor already in the system?

09:13:22 2 **A** Yes, that's correct.

09:13:23 3 **Q** If it's a new doctor, a doctor who, you know, maybe
09:13:26 4 just out of medical school or isn't in the system already,
09:13:29 5 do you have to manually type that or does the system pull
09:13:35 6 information about doctors from a third-party source?

09:13:37 7 **A** So it's possible you would have to enter information
09:13:39 8 for a doctor into the computer system if they weren't
09:13:44 9 previously registered, but it happens very rarely.

09:13:52 10 **Q** What does data review mean, Step 3?

09:13:54 11 **A** So Step 3 is something that can only be completed by
09:13:58 12 the pharmacist.

09:13:59 13 So after the prescription has been scanned into the
09:14:05 14 computer system and someone types the information from the
09:14:11 15 prescription into the computer system, then the pharmacist
09:14:16 16 would verify that the information that is on the piece of
09:14:20 17 paper or on the electronic prescription matches what has
09:14:25 18 been typed in.

09:14:28 19 **Q** And can a second tech, a second technician be the one
09:14:34 20 to check the work of the first technician or does it have to
09:14:40 21 be the pharmacist?

09:14:40 22 **A** No. Only the pharmacist can complete that task
09:14:43 23 because we're verifying that the drug information is
09:14:45 24 correct.

09:14:45 25 **Q** All right.

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09:14:47 1 We're going to come back in a little more detail to
09:14:50 2 step four, DUR and GFD review by the pharmacist. So let's
09:14:56 3 just jump ahead here to Step 5, filling.

09:14:58 4 What does that entail?

09:14:59 5 **A** So filling is actually placing the drug product into
09:15:06 6 the prescription vial.

09:15:12 7 So it would be counting the medication. So actually
09:15:14 8 retrieving the medication from the pharmacy shelves. So
09:15:17 9 when you go into the pharmacy, you'll see all of the
09:15:20 10 medication on the shelves.

09:15:22 11 The technician or the pharmacist can complete this
09:15:25 12 step. Someone would have to go to the shelves, pull the
09:15:30 13 medication, count the medication out, and then put that
09:15:35 14 medication into a vial. That's the basic filling process.

09:15:39 15 **Q** When you say go to the shelves, if we're talking about
09:15:42 16 a Schedule II controlled substance, are they just on the
09:15:47 17 same shelves with the antibiotics and the cholesterol pills?

09:15:51 18 **A** They're not. A Schedule II controlled substance is
09:15:55 19 actually locked up in a safe and so only the pharmacist can
09:15:57 20 retrieve those medications.

09:15:59 21 We actually have a key. And so I have a key to those
09:16:04 22 cabinets.

09:16:05 23 In my store, there are four cabinets that those
09:16:09 24 medications are kept in just for space sake. We split them
09:16:16 25 up into those four cabinets.

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09:16:18 1 **Q** Who has those keys to get into the cabinets?

09:16:20 2 **A** Only the pharmacist, and the pharmacist has to keep
09:16:24 3 those keys on their person at all times.

09:16:27 4 **Q** So you can't give it to the technician and say, "Hey,
09:16:31 5 do me a favor, will you get oxycodone out of the cabinet?"

09:16:35 6 **A** No. It has to be the pharmacist to retrieve it.

09:16:38 7 **Q** Okay.

09:16:39 8 But a technician would be allowed to count the pills
09:16:41 9 out and put them in the bottle?

09:16:42 10 **A** Correct.

09:16:43 11 **Q** Then product review, Step 6. What does that mean?

09:16:45 12 **A** So a product review is after the medication is in the
09:16:50 13 vial and it's been counted out, then that medication will
09:16:57 14 come to the pharmacist and the pharmacist will actually
09:17:03 15 check to be sure that the medication that's in the vial
09:17:07 16 matches what is supposed to be dispensed, based on what is
09:17:14 17 on the prescription or what the doctor wrote for, to ensure
09:17:19 18 that that is what is supposed to be in the vial.

09:17:23 19 **Q** Now, it says "by pharmacist."

09:17:25 20 Couldn't you have a second pharmacy technician just
09:17:29 21 check the work of the first pharmacy technician who filled
09:17:33 22 the prescription?

09:17:33 23 **A** No. It has to be completed by a pharmacist.

09:17:35 24 **Q** Okay.

09:17:35 25 And then at that point, are you ready to, you know,

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09:17:38 1 staple the bag shut and put it on the shelf waiting for the
09:17:41 2 customer to come in?

09:17:41 3 **A** That's correct.

09:17:42 4 After I've checked to ensure that the product is
09:17:45 5 correct, based on what was written on the prescription, then
09:17:49 6 it can go into a bag. And at that point, the bag can go
09:17:54 7 onto the shelf, into what we call our prescription bins.
09:17:59 8 And in those bins is where it waits for someone to come and
09:18:02 9 pick it up.

09:18:02 10 **Q** So when I go to pick up the prescription and they
09:18:04 11 spend 10 minutes rummaging around trying to find my last
09:18:08 12 name, that's where they're looking?

09:18:10 13 **A** Correct.

09:18:10 14 **Q** Not 10 minutes at Walgreens, but it could take longer?

09:18:13 15 **A** It can be.

09:18:15 16 **Q** It could take longer than it feels like it should;
09:18:18 17 right?

09:18:19 18 **A** Right.

09:18:19 19 **Q** So what is IntercomPlus?

09:18:21 20 **A** So IntercomPlus is just the name for our computer
09:18:24 21 system that we use for all of our prescriptions.

09:18:27 22 **Q** Did you help us mock up some screenshots of what it
09:18:31 23 actually looks like when you're working in IntercomPlus?

09:18:34 24 **A** Yes.

09:18:34 25 **Q** All right. Let me show you the first of those.

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09:18:39 1 Could you just describe at a high level to the jury
09:18:41 2 and then I'll ask you some specific questions. What are we
09:18:44 3 looking at here -- actually I'll clarify for everybody.

09:18:46 4 We made up this information. There is -- this is not
09:18:49 5 an actual human being's prescription. Obviously no one's
09:18:52 6 name is "Test Patient."

09:18:53 7 This -- we're not revealing anyone's personal
09:18:55 8 information; correct?

09:18:56 9 **A** Correct.

09:18:56 10 **Q** Okay. Tell us what we're looking at.

09:18:59 11 **A** So this would be a data review screen.

09:19:04 12 So this prescription, Test Patient, is a prescription,
09:19:10 13 like let's say someone brought it into the pharmacy and the
09:19:14 14 prescription has already been scanned into the computer, and
09:19:21 15 at this point, the prescription has been scanned in, and the
09:19:24 16 prescription has been typed by either the pharmacist or the
09:19:28 17 technician.

09:19:28 18 And so you can see on the left-hand side of the screen
09:19:32 19 the prescription shows up for me to see, and on the
09:19:38 20 right-hand side of the screen, you can see that the
09:19:40 21 prescription has been typed in so that we're matching what
09:19:45 22 shows up on the prescription blank to what is typed in.

09:19:51 23 **Q** And this is at the data review stage. So this is when
09:19:55 24 you, as the pharmacist, are looking to confirm that whoever
09:19:58 25 did the initial data entry got everything right?

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09:20:00 1 **A** Right.

09:20:01 2 So I'm confirming that what is on the actual
09:20:04 3 prescription blank is typed in correctly into the computer
09:20:09 4 system.

09:20:09 5 **Q** All right.

09:20:10 6 So help us -- some of us probably know what -- how to
09:20:15 7 decode that but help us decode what the doctor has written
09:20:18 8 there that I've circled in red.

09:20:20 9 **A** Sure.

09:20:21 10 So this is a prescription for Vicodin, and then that's
09:20:25 11 the strength of the medication, 5/325. So Vicodin is a
09:20:29 12 combination of two medications; hydrocodone and
09:20:35 13 acetaminophen.

09:20:35 14 It is 5 milligrams of hydrocodone and 350 grams of
09:20:42 15 acetaminophen. That's just how it's abbreviated. And then
09:20:44 16 those are the directions that the patient would take the
09:20:47 17 medication; one tablet every 4 to 6 hours as needed.

09:20:51 18 And then the quantity of the tablets that need to be
09:20:56 19 dispensed, which is 30 tablets.

09:20:57 20 **Q** So it looks like in this case, the person who did the
09:21:00 21 data entry got it all correct; one tablet by mouth every 4
09:21:03 22 to 6 hours as needed. Although, they wrote by mouth twice
09:21:10 23 for some reason.

09:21:10 24 MR. WEINBERGER: Objection. I thought this
09:21:12 25 was a mockup. That person got it right. I thought this was

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09:21:14 1 a mockup.

09:21:15 2 MR. STOFFELMAYR: In our hypothetical
09:21:16 3 scenario.

09:21:16 4 MR. WEINBERGER: Oh, okay.

09:21:17 5 THE COURT: I'll sustain the way it was asked.

09:21:20 6 MR. STOFFELMAYR: Okay. I get it.

09:21:24 7 BY MR. STOFFELMAYR:

09:21:24 8 **Q** In this mockup, have we mocked up a situation where
09:21:28 9 the technician got it right or wrong when they typed in this
09:21:31 10 information?

09:21:32 11 **A** So I would go in here and click this button called
09:21:36 12 "Update Product" and when I clicked this button called
09:21:41 13 "Update Product," then I would be able to take out that
09:21:44 14 duplicate "by mouth."

09:21:45 15 **Q** What are we looking at up here, if you're an
09:21:48 16 IntercomPlus?

09:21:50 17 And I should say other than the fact that we have
09:21:52 18 changed names and phone numbers, is this accurate; this is
09:21:55 19 what you really see in real life?

09:21:56 20 **A** Right.

09:21:57 21 This is what I would see, and it would be based on the
09:22:00 22 patient's information for each patient that we see.

09:22:03 23 **Q** Okay.

09:22:04 24 What is a -- the information across the top that I've
09:22:07 25 circled?

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09:22:07 1 **A** So, on the very left-hand side, it would be the
09:22:10 2 patient name. Then we would go to the patient birth date.
09:22:15 3 The next is the patient age.

09:22:17 4 So it figures out the patient age for you. The birth
09:22:21 5 date is there, but I don't have do that quick math in my
09:22:24 6 head. It already figures out that information.

09:22:27 7 It tells me whether the patient is male or female. It
09:22:31 8 gives me the phone number of the patient and then the
09:22:34 9 address of the patient.

09:22:35 10 **Q** All right.

09:22:35 11 Now, I see, if we look down, if this doctor at the
09:22:42 12 bottom were unfamiliar to you, the prescriber, if the
09:22:46 13 prescriber were unfamiliar to you, would you be able to get
09:22:51 14 more information about where the prescriber is located or
09:22:53 15 other information about them?

09:22:54 16 **A** Sure. I could get that in a couple different places.

09:22:57 17 **Q** How would you do that?

09:22:58 18 **A** So there are a couple of different ways in the
09:23:01 19 computer system I could get that.

09:23:04 20 When a doctor writes a prescription, oftentimes their
09:23:10 21 information will be on the actual prescription blank.
09:23:17 22 So with their prescription blank, their office information
09:23:19 23 will be there. If they're sending over an electronic
09:23:26 24 prescription, their office address, phone number, fax
09:23:31 25 number, everything will be attached to that electronic

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09:23:36 1 prescription as well.

09:23:39 2 Within our computer system, I can always go and do a
09:23:41 3 search very easily at the top of my screen, which you can't
09:23:48 4 see the very top. I can click a button called "Prescriber
09:23:53 5 Info," and at that prescriber info, I can basically pull
09:23:58 6 down a drop box and it will quickly send me to that
09:24:03 7 prescriber's information page where I could see the office
09:24:05 8 information, like phone number, address, DEA number, NPI
09:24:11 9 number, those sorts of things.

09:24:13 10 **Q** Now, in this example the top two buttons are green and
09:24:16 11 the bottom button where it says "Prescriber" is not green.

09:24:20 12 What does that tell you if you're looking at it?

09:24:21 13 **A** So as I am reviewing this prescription on the data
09:24:27 14 review screen, I am looking at the left-hand side of my
09:24:34 15 screen at the patient's name, and then I am looking at the
09:24:39 16 right-hand side of my screen at the patient's name.

09:24:43 17 If I can confirm that the name on the left-hand side
09:24:48 18 matches the name on the right-hand side, then I can click
09:24:53 19 this green -- this patient button. It will turn green for
09:24:57 20 me and then I can kind of proceed to the next part.

09:25:01 21 **Q** Sorry. Go ahead.

09:25:03 22 Are you able to move to the next step in the process
09:25:06 23 before you've checked patient product and prescriber?

09:25:11 24 **A** So I can't go forward past this screen until the
09:25:18 25 patient button, the product button, and the prescriber

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09:25:21 1 button are all green.

09:25:23 2 **Q** And you -- who gets them to be green? Can anyone do
09:25:26 3 that?

09:25:26 4 **A** I'm sorry. What was that again?

09:25:27 5 **Q** How do they get to be green? Who's making them green?

09:25:31 6 **A** So only the pharmacist can -- only the pharmacist can
09:25:34 7 make them green. And, in fact, only when a pharmacist is
09:25:40 8 logged on to a computer can they even access the screen.

09:25:45 9 So if a technician is logged on to a computer screen
09:25:49 10 or a computer terminal, they can't even access the data
09:25:53 11 review page. It will -- the computer system will completely
09:25:57 12 block them from accessing data review. A technician
09:26:01 13 wouldn't even be able to see this screen.

09:26:04 14 **Q** Okay.

09:26:05 15 This -- this field down here is blank, PBR DEA. PBR
09:26:11 16 is a prescriber, not beer brand; correct?

09:26:13 17 **A** Right.

09:26:14 18 **Q** And if that's blank, if you don't have a DEA number in
09:26:16 19 there, are you able to move forward in the process?

09:26:20 20 **A** If this is a controlled substance, you would not be
09:26:23 21 able to move forward without a DEA number.

09:26:25 22 **Q** If you've typed in a random DEA number, just 123816 to
09:26:31 23 try to move forward in the process because you didn't want
09:26:33 24 to be bothered, would that work?

09:26:34 25 **A** No.

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09:26:35 1 **Q** Why not? What would happen?

09:26:36 2 **A** If would give me a pop-up screen. It would tell me a
09:26:42 3 message saying something like the DEA number is not active
09:26:45 4 or the DEA number does not work or -- I don't know exactly
09:26:50 5 what the screen says, but it would not let me go forward,
09:26:53 6 and it would make me double-check or correct or, you know,
09:26:57 7 do something to make sure that the DEA number is correct
09:27:00 8 before going on.

09:27:02 9 **Q** Do you have to do anything to check if a DEA number is
09:27:04 10 valid or does the system do that for you?

09:27:07 11 **A** The system will do that for me.

09:27:09 12 **Q** All right.

09:27:10 13 Now, in this screen we're looking at, there's this
09:27:16 14 yellow box on the prescription. Did that come with the
09:27:20 15 prescription or what is that?

09:27:22 16 **A** So that doesn't come with the prescription. That's
09:27:26 17 something at Walgreens that we call an annotation.

09:27:30 18 So if you look down underneath that prescription
09:27:36 19 image, you'll see another little box that says annotations?

09:27:42 20 **Q** This one?

09:27:43 21 **A** Oh, okay. You've got it there. Yeah.

09:27:44 22 So you'll see that box that says annotations. This is
09:27:47 23 a note that we attach to the hard copy prescription. So
09:27:55 24 then it becomes part of that hard copy prescription. So if
09:28:00 25 I had something that I wanted to attach to this

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09:28:03 1 prescription, a message, a note, I would click this yellow
09:28:13 2 box, or little -- it looks kind of like a note.

09:28:20 3 **Q** The jurors can't see obviously what you're pointing
09:28:23 4 at.

09:28:23 5 **A** Right.

09:28:23 6 **Q** Is this what we're talking about right here
09:28:26 7 (indicating)?

09:28:26 8 **A** Yes, that's what I'm talking about right there, and it
09:28:29 9 would bring up a blank yellow box for me on that
09:28:32 10 prescription image. And within that blank yellow box, I
09:28:36 11 would be able to type my note directly onto that hard copy
09:28:41 12 image. And then that note would be retained or stay with
09:28:49 13 that hard copy image going forward.

09:28:50 14 **Q** So let's say a year from now, the same patient were to
09:28:54 15 come back and you were looking at their prescription history
09:28:58 16 and you wanted to look at this particular prescription; a
09:29:02 17 year later, you're looking back for some reason. Would that
09:29:04 18 note still be there?

09:29:05 19 **A** Correct. Yes, it would still be there.

09:29:08 20 **Q** All right.

09:29:08 21 Now, if you, in the process of filling this
09:29:11 22 prescription, wanted to make a note that other Walgreens
09:29:16 23 pharmacists could see filling a different prescription for
09:29:20 24 the same patient, is there a way you could do that?

09:29:24 25 **A** Yes, um-hmm.

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09:29:25 1 **Q** Explain to us how you would do that.

09:29:28 2 **A** So I could put a note in the patient comments field
09:29:34 3 and that would be something that pharmacists could see at
09:29:36 4 another store. And it wouldn't matter if they were filling
09:29:42 5 this prescription or like a different prescription.

09:29:43 6 **Q** Okay. So I've circled a little notepad and the word,
09:29:48 7 "Patient comment," down there. Is that what you were
09:29:50 8 talking about?

09:29:50 9 **A** Yes, that's it.

09:29:51 10 **Q** And what does the yellow notepad tell you?

09:29:54 11 **A** So that yellow node pad is nice because it tells us if
09:29:57 12 there's already a comment there.

09:30:03 13 When you're looking at the bottom of the screen, you
09:30:05 14 can see that there are a lot of buttons at the bottom of the
09:30:11 15 screen. And so it makes it easy to see that there's already
09:30:14 16 a patient comment inside that patient's particular
09:30:20 17 information so that I don't have to click through every
09:30:23 18 single one of those buttons to find out, oh, my gosh, is
09:30:26 19 there a comment there, or is there not a comment there.

09:30:28 20 I know by seeing that yellow notepad, there's already
09:30:32 21 a comment there, and I can easily click that patient comment
09:30:37 22 button and see what that comment is.

09:30:38 23 **Q** And when you're filling a prescription for a
09:30:40 24 controlled substance, are you always going to check to see
09:30:43 25 what the prior patient comments are?

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09:30:45 1 **A** I'm always going to check those patient comments if
09:30:48 2 they're there, whether it's a controlled substance or not.

09:30:50 3 **Q** All right. What are we looking at here?

09:30:57 4 **A** And so when you click that patient comment button, so,
09:31:01 5 you know, when it has the yellow notepad and I see that
09:31:04 6 there's a patient comment, I'll click that patient comment
09:31:07 7 button and this screen will pop up.

09:31:10 8 **Q** And what is -- how -- as a pharmacist, what does that
09:31:13 9 mean to you if you were to see that comment?

09:31:16 10 **A** And, so, this is similar to a comment that I might put
09:31:20 11 in.

09:31:22 12 This comment says "GFD refused, oxycodone 11-11-2018,"
09:31:30 13 and then it says CFB.

09:31:33 14 So what this means to me is, it says GFD, which is our
09:31:36 15 abbreviations at Walgreens for "Good Faith Dispensing." And
09:31:40 16 it says refused oxycodone. So this means to mean that based
09:31:46 17 on Good Faith Dispensing, someone has refused a prescription
09:31:49 18 for oxycodone back on 11-11 of 2018. And then that's a
09:31:54 19 person's initials, CFB.

09:31:58 20 So I would easily be able to see that the pharmacist,
09:32:01 21 CFB, refused a prescription for oxycodone back on
09:32:07 22 11-11-2018.

09:32:07 23 **Q** All right.

09:32:07 24 That's a patient comment. What if you had a -- you
09:32:11 25 had a comment about the doctor, the prescriber, that you

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09:32:15 1 wanted other Walgreens pharmacists to be able to see if they
09:32:21 2 got a prescription written by the same doctor but for a
09:32:23 3 totally different patient; is there a way you would do that?

09:32:27 4 **A** Right.

09:32:28 5 So it's very similar at the bottom. You'll see that
09:32:31 6 PBR comments, and so that's the abbreviations for
09:32:35 7 prescriber.

09:32:36 8 And can see that there's another little yellow notepad
09:32:38 9 there, which means that there is a comment residing within
09:32:41 10 that button. So you could easily just click that prescriber
09:32:45 11 comment button to see what's there.

09:32:47 12 **Q** All right. Is this an example?

09:32:49 13 **A** Right.

09:32:50 14 And, so, that's an example of what might be within the
09:32:54 15 prescriber comments. Those two fields always show up within
09:32:58 16 the prescriber comments. One is a location comment and one
09:33:04 17 is just a general comment.

09:33:07 18 So a location comment might be something specific to
09:33:14 19 that prescriber's location. For example, prescribers
09:33:23 20 sometimes have several offices. So when you go into a
09:33:28 21 prescriber's information, you might find that a prescriber
09:33:32 22 is registered several different times within the computer
09:33:36 23 system. The prescriber might be registered at three
09:33:42 24 different offices. So this first comment would be specific
09:33:46 25 to a certain location.

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09:33:49 1 The second comment would be just a general comment for
09:33:52 2 the prescriber, no matter which office you're speaking of.

09:33:55 3 **Q** And just to complete it, what is -- how would you
09:33:59 4 decode that second comment?

09:34:01 5 **A** So the second comment would just be meaning that the
09:34:04 6 doctor doesn't accept refill requests that are faxed to
09:34:09 7 them.

09:34:11 8 **Q** The jury heard -- let me go back to the patient
09:34:14 9 comment.

09:34:14 10 The jury heard testimony that it's possible to run out
09:34:19 11 of room in the patient comment field. There's a character
09:34:22 12 limit, and you would have to delete information to make a
09:34:25 13 new comment.

09:34:26 14 Do you have any experience with that?

09:34:29 15 **A** In my 25 years at Walgreens, I've never had the
09:34:33 16 occasion to remove a comment for something that's important
09:34:37 17 information.

09:34:37 18 **Q** You've never run out of room in the patient comment
09:34:40 19 field?

09:34:40 20 **A** I've never had the occasion to remove anything that's
09:34:43 21 important.

09:34:44 22 **Q** We've already heard the accusation that we faked
09:34:48 23 these.

09:34:48 24 Are these comments in these fields that we're looking
09:34:51 25 at, are these typical of what you see in your day-to-day

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09:34:54 1 practice at Walgreens?

09:34:56 2 MR. WEINBERGER: Objection.

09:34:57 3 MR. STOFFELMAYR: Mr. Lanier said out loud,
09:34:58 4 "You faked it."

09:34:59 5 MR. WEINBERGER: Objection.

09:35:00 6 THE COURT: Overruled.

09:35:00 7 THE WITNESS: Yeah, these are typical
09:35:02 8 comments. I mean, these are things that I would see on a
09:35:06 9 daily basis.

09:35:17 10 BY MR. STOFFELMAYR:

09:35:17 11 **Q** What is -- what is this screen? What are we looking
09:35:20 12 at here?

09:35:21 13 The jury has heard this expression and some of us may
09:35:24 14 remember, some of us may have lost track. What does DUR
09:35:28 15 stand for? Why don't you tell us that.

09:35:30 16 **A** So that stands for Drug Utilization Review.

09:35:32 17 **Q** What does that mean at a high level? And then explain
09:35:35 18 to us specifically what we're looking at on this screen.

09:35:37 19 **A** Right.

09:35:37 20 So this means that we're basically looking to see if
09:35:44 21 there are any drugs that are interacting with each other,
09:35:53 22 any health conditions that are interacting with the drug, if
09:35:58 23 there are any other things that might prevent us from
09:36:05 24 dispensing the prescription as far as what appears in the
09:36:09 25 patient profile or the drug history.

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09:36:11 1 **Q** So in this example, it's a 72-year-old female and
09:36:15 2 there's some text. Do you see where it says "DUR summary"?

09:36:20 3 **A** Correct.

09:36:20 4 **Q** That DUR summary text, is that something the
09:36:24 5 pharmacist typed in or where does that come from?

09:36:26 6 **A** No. That's auto-populated information for me to
09:36:32 7 review.

09:36:32 8 **Q** So the system gives that to you; you don't have to
09:36:36 9 look it up yourself?

09:36:36 10 **A** Correct.

09:36:37 11 **Q** And in this case, why don't you tell us how you, as a
09:36:39 12 pharmacist, would interpret a DUR summary like that?

09:36:42 13 **A** So this is a -- this is a 72-year-old patient. The
09:36:50 14 system considers patients of this age to be elderly, and
09:36:57 15 there is an amount of caution that you must use in
09:37:00 16 dispensing this particular medication for an elderly
09:37:05 17 patient.

09:37:05 18 This medication could cause a fall risk for someone of
09:37:08 19 that age. And so we would need to look at it a little more
09:37:13 20 closely.

09:37:13 21 **Q** Down here it says -- there's this black bar. Is that
09:37:17 22 what they call a DUR alert?

09:37:19 23 **A** Correct.

09:37:19 24 **Q** And I see under resolve, it says N. What is -- what
09:37:23 25 is going on there?

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09:37:23 1 **A** So what it's telling me is that there is a DUR alert,
09:37:30 2 and we're looking at this drug along the health condition.

09:37:36 3 So it is telling me the DUR is between the drug and
09:37:40 4 the health condition, and that it has not yet been resolved.

09:37:44 5 **Q** Can you fill this prescription without resolving these
09:37:48 6 DUR alerts?

09:37:49 7 **A** No. I can't even print a leaflet in order to go to
09:37:57 8 the next step of filling the prescription, you know, going
09:38:01 9 to retrieve it from the shelf and counting it out. I can't
09:38:05 10 even get a leaflet to do that next step without resolving
09:38:09 11 this.

09:38:10 12 **Q** In your terminology, when you say leaflet, are you
09:38:13 13 talking about the sticker that goes on the bottle or are you
09:38:15 14 talking about the big printout thing you staple to the bag?

09:38:18 15 **A** Right. Yeah.

09:38:20 16 I'm actually talking about the part that you staple to
09:38:23 17 the bag. You do need that leaflet in order to get the
09:38:30 18 sticker, so. . .

09:38:34 19 **Q** Before you have a sticker, can the pharmacy tech go to
09:38:37 20 the shelf and pull the bottle down and start counting out
09:38:40 21 pills?

09:38:41 22 **A** You would need the leaflet before you could go to the
09:38:44 23 shelf to get the pills.

09:38:45 24 **Q** Okay.

09:38:45 25 So until you print the leaflet, you can't move to the

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09:38:47 1 next step?

09:38:48 2 **A** Correct.

09:38:48 3 **Q** And if you haven't resolved a DUR alert, can you print
09:38:53 4 the leaflet?

09:38:53 5 **A** No.

09:38:55 6 **Q** Hypothetical, if this patient were to come back
09:39:01 7 two days later with a second prescription, also for Vicodin
09:39:04 8 but maybe in a higher dose, is that going to count -- are
09:39:08 9 you going to see a DUR alert because this person has over --
09:39:12 10 has multiple prescriptions for the same medicine?

09:39:14 11 **A** Yes, you should.

09:39:15 12 **Q** And if the patient came back with that second
09:39:18 13 prescription, would you be able to fill the second
09:39:20 14 prescription without resolving that new DUR?

09:39:22 15 **A** No.

09:39:24 16 **Q** Let's say you have a patient -- let's say this
09:39:26 17 patient, for example, was already taking anxiety medication,
09:39:30 18 maybe the patient had a prescription for Xanax for anxiety
09:39:36 19 and then she comes in with this Vicodin prescription, would
09:39:39 20 the DUR system recognize the potential interaction between a
09:39:42 21 benzodiazapine and an opioid medication?

09:39:44 22 **A** Yes. Yes.

09:39:45 23 **Q** And would it give you a DUR alert?

09:39:46 24 **A** Yes.

09:39:47 25 **Q** Would you be able to fill this Vicodin prescription

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09:39:50 1 without resolving that DUR alert?

09:39:55 2 **A** No.

09:40:05 3 **Q** Let's look at a couple more pages. Oh, actually, I
09:40:08 4 should have asked you this:

09:40:10 5 What's going on in this box? I skipped over it.

09:40:13 6 **A** Oh, okay. So, could you -- could you go back one
09:40:17 7 screen?

09:40:17 8 **Q** Of course.

09:40:18 9 So this -- we're back to the original example. You
09:40:21 10 only had one DUR alert because this is her only
09:40:25 11 prescription, and it's because she's elderly; correct?

09:40:29 12 **A** Correct.

09:40:30 13 And so in the annotation -- so, when you're filling a
09:40:32 14 prescription for a drug like this, it would be important to
09:40:37 15 have the diagnosis code available to you for this
09:40:47 16 medication.

09:40:47 17 So with a Vicodin prescription, with a controlled
09:40:54 18 substance prescription, when we have a prescription
09:40:56 19 presented to us for a medication that's a controlled
09:40:59 20 substance, we are making sure that along with the name of
09:41:07 21 the medication, the quantity, the directions, the doctor's
09:41:10 22 name, that we also have a diagnosis code on the prescription
09:41:16 23 for why the patient is using the medication.

09:41:19 24 And so you can see on this prescription, there's no
09:41:23 25 diagnosis code. And so that would be a reason that I would

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09:41:26 1 need to call the doctor's office and find out why the
09:41:32 2 patient is using this medication.

09:41:34 3 Usually, in the course of my practice, doctors will
09:41:40 4 write that diagnosis code on the prescription, or with an
09:41:45 5 electronic prescription, that diagnosis code will come over
09:41:48 6 as part of the prescription. So in that yellow annotation
09:41:54 7 box, it looks as if the pharmacist called to confirm what
09:41:59 8 the diagnosis was for this particular prescription so that
09:42:05 9 we could have that documented going forward.

09:42:07 10 And so it looks like the pharmacist spoke to Jan, RN,
09:42:10 11 so Jan, the nurse, and that the diagnosis -- DX is our code
09:42:15 12 for that -- diagnosis was post-surgical pain. Okay?

09:42:20 13 **Q** And when you go to resolve this DUR, do you get a
09:42:24 14 pop-up box?

09:42:25 15 **A** Um-hmm.

09:42:26 16 **Q** And is that what we're looking at here?

09:42:27 17 **A** Right.

09:42:28 18 And so at the bottom of the screen, when I went to --
09:42:31 19 when I go to resolve that DUR, I would hit the resolve
09:42:34 20 button, and this screen would pop up for me. And so then I
09:42:37 21 would be able to go into this DUR intervention comment, and
09:42:43 22 in that DUR intervention comment, I would be able to click
09:42:48 23 this little drop-down menu. It says "reviewed patient
09:42:52 24 history, contacted prescriber," you know, "discussed with
09:42:57 25 patient."

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09:42:59 1 And so the comment here says, "NTT okay for
09:43:04 2 post-surgical." And NTT means, to me, it's an abbreviation,
09:43:08 3 new to therapy.

09:43:09 4 And so this would be a prescription maybe that the
09:43:12 5 patient hasn't ever had before. So they're new to therapy
09:43:16 6 on it because it's for post-surgical pain.

09:43:19 7 **Q** All right.

09:43:19 8 I want to just go through quickly a couple more
09:43:22 9 screens that you may see or maybe always see when you fill a
09:43:25 10 prescription so, just so people have some idea of the kind
09:43:28 11 of information you have available.

09:43:30 12 What is -- what is this screen?

09:43:34 13 **A** This is a patient profile screen.

09:43:39 14 **Q** And is that available for everyone who fills a
09:43:43 15 prescription at Walgreens?

09:43:44 16 **A** Correct.

09:43:45 17 This shows all of the prescriptions that you would
09:43:48 18 have filled at any Walgreens.

09:43:50 19 **Q** So hypothetical, if Ms. Test Patient had filled a
09:43:56 20 prescription in California at a Walgreens, you would see it
09:43:58 21 here?

09:43:58 22 **A** Correct.

09:43:58 23 **Q** Does this include only controlled substances or all of
09:44:00 24 her prescriptions?

09:44:01 25 **A** No, it's all of the prescriptions that you filled at

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09:44:03 1 Walgreens.

09:44:04 2 **Q** Does it go back to the beginning of time? Do you know
09:44:06 3 how far back it goes?

09:44:07 4 **A** It goes back about 18 months.

09:44:15 5 **Q** Last one I want to show you, the product review page.
09:44:19 6 Can you explain to us, just at a high-level, what
09:44:22 7 we're looking at here?

09:44:23 8 **A** Sure.

09:44:24 9 So after all of the steps have been completed, we have
09:44:31 10 reviewed the data, I have resolved all of the DURs, the
09:44:40 11 technician or myself have actually filled the prescription
09:44:42 12 and it's in the bottle, then I would have the product in
09:44:49 13 front of me and I would see this product review page.

09:44:54 14 And so what we're looking at here is I would have in
09:44:58 15 front of me an image of what the pill is supposed to look
09:45:01 16 like, that's in the bottle, that's in front of me, that I
09:45:06 17 would be able to look inside the bottle and verify that
09:45:11 18 that's the drug that the patient should be receiving versus
09:45:15 19 what's inside the bottle that I'm looking at before
09:45:18 20 dispensing it.

09:45:20 21 **Q** And what is it -- what's this that I just circled down
09:45:24 22 here on the product review page?

09:45:26 23 **A** So that's the patient PDMP report or what you might
09:45:31 24 know as the OARRS report. And so that's just a hyperlink,
09:45:34 25 which I can get to the OARRS report for this particular

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09:45:37 1 patient pretty quickly just by clicking that link.

09:45:40 2 **Q** So when you click on that link, does it take you to
09:45:42 3 the OARRS web page or it pre-generates the report just for
09:45:45 4 that patient?

09:45:46 5 **A** It's already a pre-generated report. It's going to go
09:45:49 6 directly to the current real time OARRS report for that
09:45:54 7 patient.

09:45:54 8 **Q** Do you see a NarxCare score as well?

09:45:58 9 **A** Yeah. That's -- comes as part of the OARRS report for
09:46:02 10 the patient.

09:46:03 11 **Q** All right. Let's move on to some new topics.

09:46:06 12 Let's talk a little bit about red flags. And we
09:46:11 13 started this discussion yesterday. So to bring us back to
09:46:15 14 where we were, could you tell the jury, again, you know, for
09:46:18 15 you in your practice, what is a red flag? What does that
09:46:22 16 mean when you're filling a controlled substance
09:46:24 17 prescription?

09:46:25 18 **A** So a red flag is basically, I mean, in short form,
09:46:29 19 something that makes me uncomfortable about the
09:46:31 20 prescription.

09:46:33 21 **Q** And we looked at some Walgreens policies yesterday,
09:46:37 22 but just to come back to some of your testimony about those,
09:46:41 23 is there, for you in your practice, any exhaustive list
09:46:45 24 where you would say, okay, those 20 things are all the
09:46:48 25 possible red flags that I would ever worry about?

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09:46:51 1 **A** No.

09:46:52 2 **Q** And is there any list of circumstances where you would
09:46:55 3 say a hundred percent of the time, doesn't matter what the
09:46:57 4 circumstances are, that is a red flag to me and I'm
09:47:01 5 uncomfortable?

09:47:02 6 **A** No.

09:47:04 7 **Q** We looked earlier, or yesterday, I guess, at the
09:47:10 8 Walgreens policy from 2012 that said you were expected to
09:47:14 9 document the resolution of red flags.

09:47:16 10 Do you remember that?

09:47:16 11 **A** Um-hmm.

09:47:18 12 **Q** And is that your -- well, just tell us, what is your
09:47:21 13 practice as Amy Stossel, a pharmacist? What is your
09:47:24 14 practice by documenting a red flag resolution?

09:47:27 15 **A** So I try to document the red flags for prescriptions.
09:47:33 16 It's not something that I think happens 100 percent of the
09:47:37 17 time.

09:47:38 18 **Q** Why not? Why wouldn't it happen a hundred percent of
09:47:41 19 the time no matter what?

09:47:42 20 **A** So sometimes you have a repeat prescription for a
09:47:47 21 patient that you might have filled 10 times or 12 times for
09:47:52 22 the same patient and, you know, I have patients that I've
09:47:58 23 come to know.

09:48:03 24 I have a little lady that comes in and she has
09:48:06 25 osteoarthritis in her hip. She comes on the bus from a

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09:48:11 1 little elderly residents community. She's been coming to me
09:48:22 2 for a long time.

09:48:22 3 I could take the time to document for her every single
09:48:25 4 time she comes in about, you know, the red flags with her
09:48:28 5 prescription, or I could take a few minutes at the counter
09:48:30 6 with her and make sure that she gets what she needs; that
09:48:34 7 she's not in pain, that everything is going okay for her, or
09:48:38 8 does she need a couple things from the front of the store
09:48:42 9 one of us could help her get.

09:48:43 10 It's kind of like a judgment call, I guess.

09:48:47 11 **Q** Let me --

09:48:49 12 **A** What I need to do with my time.

09:48:52 13 **Q** Let me ask you about a hypothetical scenario we heard
09:48:56 14 about some weeks ago now.

09:48:59 15 Let's say a patient comes with a patient, same
09:49:02 16 prescription, same doctor, for an opioid and a
09:49:03 17 benzodiazapine.

09:49:04 18 Brand new patient you've never seen before, doctor's
09:49:06 19 in Cincinnati and for you, you're like, whoa, this is funky,
09:49:10 20 I need to look into this.

09:49:11 21 Can you imagine a situation like that?

09:49:13 22 **A** Yeah.

09:49:14 23 **Q** If you did everything you needed to do in January to
09:49:18 24 understand the situation and decide that you were
09:49:20 25 comfortable filling that prescription because it turns out

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09:49:24 1 there were perfectly good reasons for all of that, if the
09:49:27 2 same patient came back in February, March, April, May, each
09:49:31 3 time the patient came back, would you typically document,
09:49:35 4 "Oh, back in January, I made some phone calls and it's
09:49:38 5 okay"?

09:49:38 6 Would you re-document that each time?

09:49:40 7 **A** I typically don't. I find that once it's documented
09:49:49 8 once or twice, a couple times, it becomes not necessary to
09:49:53 9 document 100 percent of the time.

09:49:54 10 You really can see a pattern with the patients. You
09:49:56 11 can see different things that are going on with the patient.
09:50:03 12 You can easily go back and view the prescription before,
09:50:06 13 where you see those yellow boxes and the annotations. It
09:50:10 14 takes just a couple seconds to click back and view that
09:50:13 15 previous prescription.

09:50:14 16 So it's really -- really not something that concerns
09:50:19 17 me or makes me feel uncomfortable about not documenting.

09:50:26 18 **Q** Let me ask you about some specific situations or red
09:50:29 19 flags that we've heard about over the last four or
09:50:32 20 five weeks.

09:50:32 21 A patient who saw a doctor 25 or more than 25 miles
09:50:37 22 away from the patient's home, are there times when that is a
09:50:41 23 real red flag for you?

09:50:43 24 **A** Sure. There are times.

09:50:44 25 **Q** Is it always a red flag for you in your practice?

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09:50:47 1 **A** No.

09:50:48 2 **Q** If you already knew everything you needed to know
09:50:53 3 about the patient, their condition, and their doctor, would
09:50:57 4 you consider that a red flag you need to document just
09:50:59 5 because they drove 26 miles to see a doctor?

09:51:02 6 **A** No.

09:51:03 7 There are a lot of patients that go to Cleveland
09:51:09 8 Clinic, that those Cleveland Clinic doctors have offices in
09:51:14 9 different areas. They might have an office at the main
09:51:18 10 campus but then have an office in Westlake or have an office
09:51:21 11 in Twinsburg.

09:51:22 12 And so you can easily see that that doctor is maybe
09:51:25 13 practicing both at main campus and Westlake. Westlake is
09:51:29 14 easily 25 miles away from Willoughby, but it's the same
09:51:33 15 physician. So it doesn't -- yeah, that doesn't give me
09:51:35 16 pause.

09:51:36 17 **Q** What about situations where you have overlapping
09:51:40 18 prescriptions for an opioid painkiller or pain reliever,
09:51:44 19 overlapping prescriptions written by two different doctors?

09:51:51 20 Are there situations where that is a true red flag for
09:51:52 21 you and you want to look into it?

09:51:53 22 **A** Sure, yeah.

09:51:54 23 **Q** Always? Does that always happen just because two
09:51:57 24 different doctors wrote a pain prescription for this
09:51:59 25 patient, is that always automatically a red flag for you in

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09:52:01 1 your practice?

09:52:02 2 **A** No.

09:52:02 3 Sometimes those can be -- sometimes those can be
09:52:07 4 resident doctors that are treating a patient for the health
09:52:12 5 condition. It happens a lot of times in cancer patients
09:52:16 6 where they're seeing a wide array of different prescribers
09:52:22 7 that might be writing a lot of different medications for
09:52:25 8 them.

09:52:25 9 **Q** In your practice, have you seen situations where
09:52:28 10 somebody who has a surgical procedure done gets a first pain
09:52:32 11 prescription written by the resident and a second
09:52:34 12 prescription written by the surgeon at a follow-up visit?

09:52:37 13 **A** Sure, yeah.

09:52:38 14 **Q** And are there times when technically, there will be
09:52:40 15 overlap in the days between those prescriptions?

09:52:43 16 **A** Of course.

09:52:43 17 **Q** What about this situation?

09:52:44 18 You see that somebody -- somebody comes in with a
09:52:47 19 seven-day prescription for a pain medicine from their family
09:52:53 20 doctor and you see that they previously got a
09:52:55 21 two-or-three-day prescription from an emergency room doctor
09:52:58 22 and technically, the prescriptions overlap. Is that a red
09:53:02 23 flag for you?

09:53:02 24 **A** No.

09:53:02 25 **Q** Why not?

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09:53:03 1 **A** Well, sometimes you have to go to the ER on a weekend.
09:53:08 2 The ER typically will give you just a few days supply of a
09:53:13 3 medication and ask you to make an appointment with your
09:53:16 4 regular doctor to follow up.

09:53:18 5 You might go to that regular doctor and they'll
09:53:21 6 present a prescription to you. You're not going to wait
09:53:25 7 till your medication from the ER is out before you go to the
09:53:28 8 pharmacy to fill the medication for the new prescription.
09:53:33 9 You're going to leave the office visit from the -- from the
09:53:36 10 primary care physician and go right to the pharmacy and fill
09:53:39 11 that new prescription. It's --

09:53:42 12 **Q** So in a situation where you already knew those factors
09:53:44 13 and knew that that was what was going on, would you consider
09:53:47 14 that a red flag that you need to document?

09:53:49 15 **A** No.

09:53:49 16 **Q** All right.

09:53:49 17 One more I'm going to ask you about, but in a little
09:53:53 18 more detail, is the red flag of a patient being on a dose
09:53:57 19 that's greater than 90MME per day.

09:54:00 20 Do you understand what I'm talking about?

09:54:01 21 **A** Sure.

09:54:03 22 **Q** Is that sometimes a red flag, that a patient's on a
09:54:06 23 very high dose?

09:54:07 24 **A** Yes. Yes.

09:54:07 25 **Q** Is it always a red flag for you that a patient's

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09:54:11 1 getting more than 90MME per day of pain medication?

09:54:14 2 **A** It's not. It really depends on the medication, the
09:54:18 3 patient, the history.

09:54:22 4 **Q** Do you have patients who have been coming to you, to
09:54:26 5 your pharmacy -- well, strike that.

09:54:28 6 You've been at the Willoughby stores for four years
09:54:31 7 you said?

09:54:31 8 **A** Correct.

09:54:32 9 **Q** Do you have pain patients who have been coming there
09:54:34 10 for four years now?

09:54:34 11 **A** Correct.

09:54:35 12 **Q** Do you have somebody who is on a relative high dose of
09:54:38 13 pain medication and they come in regularly, is it unusual
09:54:41 14 for you to get to know those folks?

09:54:43 15 **A** No.

09:54:46 16 **Q** Let me show you information we extracted -- oops, let
09:54:51 17 me get to the right page.

09:54:55 18 This is information we pulled together out of a -- it
09:54:59 19 comes out of a database, but this is a prescription that you
09:55:03 20 filled. And one of the plaintiffs experts came and said
09:55:10 21 that he was concerned that you hadn't documented the
09:55:12 22 resolution of two different red flags associated with this
09:55:15 23 prescription.

09:55:15 24 I'll tell you what they are and then I want to talk
09:55:17 25 about the prescription a little more.

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09:55:19 1 Mr. Catizone said there were two things that required
09:55:24 2 documentation here, one was the patient's receiving more
09:55:26 3 than 90MME per day, and two is, this patient had a supply of
09:55:31 4 over 210 days within a six-month period. So -- 210 days, I
09:55:36 5 guess, is seven months. So basically this person had, the
09:55:39 6 idea is, seven months worth of supply in a six-month period.

09:55:44 7 So, first off, why don't you tell us, what is the
09:55:47 8 medication this person received?

09:55:48 9 **A** So this person received a fentanyl patch.

09:55:52 10 **Q** What's a fentanyl path? How does that work?

09:55:54 11 **A** So a fentanyl patch is a pain medication. It is an
09:55:58 12 opioid. It's a patch that you place onto the skin. A lot
09:56:05 13 of times, it goes here (indicating). You wear it for
09:56:07 14 three days, you remove it, and then you apply another patch.

09:56:16 15 It's a long-acting medication.

09:56:18 16 **Q** So when it says dosage unit 10 but days' supply 30,
09:56:22 17 that's because each patch lasts for three days?

09:56:24 18 **A** Correct.

09:56:24 19 **Q** Do you have a lot of patients -- well, strike that.

09:56:27 20 Do you fill a lot of prescriptions for these fentanyl
09:56:29 21 patches?

09:56:30 22 **A** This is not -- not a common medication to fill for
09:56:34 23 patients.

09:56:35 24 **Q** Okay.

09:56:36 25 We don't know the person's name or age, but we see

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09:56:40 1 their birth year is 1960. So they're 60, 61ish; correct?

09:56:45 2 **A** Correct.

09:56:46 3 **Q** Do you happen to know who this patient is?

09:56:48 4 **A** I'm pretty sure that I do. I don't have many patients
09:56:51 5 at my store on this particular strength of medication, and
09:56:57 6 that is about the same age as a gentleman that gets this
09:57:01 7 from me every month.

09:57:03 8 **Q** And the prescribing doctor is Dr. Matthew Keum. Did I
09:57:09 9 pronounce that correctly?

09:57:10 10 **A** I believe so, yes.

09:57:13 11 **Q** Are you familiar with Dr. Keum?

09:57:15 12 **A** Yeah. This is a gentleman who writes for a lot of
09:57:18 13 pain medications. I believe he's a pain management.

09:57:20 14 **Q** Where does he practice, do you know?

09:57:22 15 **A** I think Lake Health.

09:57:24 16 **Q** In Willoughby, in the area, or is he far away?

09:57:28 17 **A** In Willoughby, um-hmm.

09:57:31 18 **Q** Over the course of helping this patient with his
09:57:35 19 fentanyl patches prescribed by Dr. Keum, have you become
09:57:42 20 familiar with this patient's medical condition and why he
09:57:44 21 needs this treatment?

09:57:45 22 **A** So if this is the patient I'm thinking of, this
09:57:47 23 gentleman actually was involved in a workplace accident
09:57:50 24 where his spine was crushed, and I've gotten to know that
09:57:56 25 just by asking him some questions at the window when he's

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09:58:01 1 picking up. And this particular medication actually flags
09:58:07 2 us at the counter when you're ringing out a prescription.
09:58:17 3 It will actually flag for the pharmacist to ask the patient
09:58:19 4 another couple questions to verify the dosage strength of
09:58:24 5 the medication before we sell it to them.

09:58:26 6 So it is an opportunity for the pharmacist to have
09:58:28 7 that one last time to talk with the patient or question the
09:58:33 8 patient. And -- so, yeah.

09:58:35 9 **Q** Is that what you're talking about, what I've kind of
09:58:39 10 partially circled, not very well?

09:58:41 11 **A** Oh, yeah.

09:58:41 12 **Q** Those consultation comments?

09:58:42 13 **A** The consultation comments.

09:58:44 14 So -- oh, this is the actual comment then that it
09:58:47 15 would say, the fentanyl consult. So if the technician was
09:58:52 16 to go and try to sell this to the person at the counter, it
09:59:03 17 would prohibit them from selling it to the patient, and it
09:59:05 18 would say that there was a block.

09:59:11 19 And then I would have to log into my computer and this
09:59:14 20 is the comment that I would see. It would say, "Fentanyl
09:59:16 21 consult. Ensure the medication being dispensed is correct
09:59:19 22 for the individual patient review and verify prescription
09:59:23 23 accuracy, previous dosage, current use, and opioid
09:59:27 24 tolerance." And it said these consultations are to meet
09:59:31 25 regulatory requirements.

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09:59:31 1 So then I would have to actually complete this consult
09:59:35 2 with the patient, you know, ask them, is it still -- so what
09:59:40 3 I would do is just ask, you know, "Is this the strength
09:59:43 4 you're still taking?" Everything looked good, it would be a
09:59:45 5 triple check for me to just make sure that the 75 micrograms
09:59:52 6 is still the strength that he's taking. And then I would --

09:59:54 7 **Q** Sorry. Go ahead.

09:59:56 8 **A** Oh. And then I would actually have to input my
09:59:59 9 initials in order to clear this consult.

10:00:01 10 **Q** So that shows AJS as you?

10:00:05 11 **A** Correct.

10:00:05 12 **Q** You're the one that had the discussion?

10:00:06 13 So when I go to the pharmacy and they say do you have
10:00:08 14 any questions for the pharmacist, and I say no, this would
10:00:10 15 be different.

10:00:11 16 If I was picking this up, they'd say you have to wait
10:00:13 17 a second and talk to the pharmacist --

10:00:15 18 **A** Correct.

10:00:16 19 **Q** -- whether you feel like it or not?

10:00:17 20 **A** Yeah. Exactly.

10:00:21 21 **Q** If a -- if somebody told you that a psychiatrist from
10:00:25 22 California had come to court and said that Dr. Keum
10:00:30 23 shouldn't be treating this man with fentanyl patches but
10:00:33 24 should be treating him differently, do you, Amy Stossel,
10:00:36 25 feel comfortable that you should tell Dr. Keum to knock off

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10:00:40 1 the fentanyl patches and get this guy some different
10:00:43 2 therapy?

10:00:43 3 **A** No.

10:00:49 4 **Q** If Walgreens told you hypothetically that Dr. Keum was
10:00:54 5 say ranked number 305 nationwide for fentanyl patch
10:00:55 6 dispensing in the Walgreens chain, would that change the
10:00:57 7 kind of attention you'd give this prescription?

10:01:00 8 **A** No.

10:01:00 9 **Q** Would you give it any more attention or any less
10:01:03 10 attention if you knew that Dr. Keum was 310?

10:01:06 11 **A** No.

10:01:06 12 **Q** What if Walgreens said, "We've looked at the data and
10:01:09 13 Dr. Keum is Number 4 in Northeastern Ohio for dispensing
10:01:14 14 opioid medications," would you give this prescription less
10:01:17 15 attention or more attention if you had that information?

10:01:20 16 **A** No.

10:01:21 17 **Q** Would you do anything with that information?

10:01:23 18 **A** No.

10:01:24 19 I -- I'm basing everything that I do on this
10:01:28 20 individual person with this individual prescription.

10:01:32 21 **Q** Okay.

10:01:33 22 There's a -- you see there's a DUR description and
10:01:36 23 it's fairly detailed. At the bottom -- here. I can circle
10:01:41 24 it. (Indicating.)

10:01:46 25 There's this whole big DUR description there.

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10:01:48 1 **A** Okay.

10:01:49 2 **Q** And at the end, it says there is a reference to
10:01:53 3 oxycodone 5-milligram immediate release tabs and fentanyl
10:01:57 4 together.

10:01:57 5 Do you see that?

10:01:58 6 **A** Um-hmm.

10:01:59 7 **Q** As a pharmacist, what does that tell you?

10:02:02 8 **A** So a lot of people who use fentanyl patches --
10:02:08 9 remember, I said those are like a long-acting medication --
10:02:15 10 a lot of people who use fentanyl patches or these
10:02:19 11 long-acting opioids also need a short-acting opioid to go
10:02:23 12 along with it for any breakthrough pain that they might
10:02:29 13 have.

10:02:29 14 One thing that happens to patients who use fentanyl
10:02:33 15 patches especially is that they change the patches every
10:02:38 16 three days.

10:02:41 17 So sometimes on that third day, when it's getting
10:02:44 18 close to the time that they're changing the patch, the
10:02:48 19 medication kind of goes up and down. So on that third day
10:02:54 20 when they're getting ready to change the patch, the
10:02:57 21 medication is going down just a little bit in their
10:03:01 22 bloodstream. They might need a short-acting opioid or
10:03:07 23 another little bit of pain medication as a supplement to
10:03:14 24 this long-acting opioid to help them with pain.

10:03:17 25 **Q** Is it unusual, in your experience, for patients on

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10:03:21 1 these long-acting opioids to be getting a second
10:03:24 2 prescription for breakthrough pain, like fentanyl plus
10:03:29 3 oxycodone or OxyContin plus hydrocodone?

10:03:31 4 **A** No.

10:03:32 5 **Q** What kind of patients do you see who are getting those
10:03:34 6 sorts of prescriptions?

10:03:35 7 **A** So, a lot of times, we see cancer patients, palliative
10:03:40 8 medicine patients, patients like this with disabilities that
10:03:44 9 need those short-acting along with the long acting.

10:03:52 10 **Q** So if you have a -- a gentleman like this with the
10:03:55 11 fentanyl patch, knowing everything you know about it,
10:03:58 12 assuming it's the right person -- and in real life, you
10:04:01 13 would see him face to face?

10:04:02 14 **A** Right.

10:04:03 15 **Q** You would know his name and be sure it's the person
10:04:04 16 you're thinking of. We don't have that information.

10:04:06 17 But assuming this is the guy we're talking about,
10:04:09 18 knowing everything you know about his situation, his
10:04:12 19 treatment history with Dr. Keum, do you consider this
10:04:17 20 prescription to raise red flags that you would need to
10:04:19 21 document?

10:04:20 22 **A** No.

10:04:23 23 **Q** Knowing everything you know about him, the fact that
10:04:27 24 his breakthrough pain prescription means technically he's
10:04:31 25 got 210-day supply in a six-month period, does that raise a

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10:04:37 1 red flag that you think you need to document?

10:04:39 2 **A** No, because he's -- in six months, he has, you know, a
10:04:47 3 180-day supply of the fentanyl and probably a 180-day supply
10:04:51 4 of the oxycodone, but that doesn't mean that he's got more
10:04:58 5 than what he needs.

10:05:02 6 **Q** Same thing for your cancer patients or your other
10:05:05 7 patients with the severe disability; the fact that they are
10:05:08 8 on a long-acting opioid plus have a short-acting medicine
10:05:12 9 for breakthrough pain, does that automatically raise a red
10:05:16 10 flag that you feel like you need to document?

10:05:17 11 **A** No.

10:05:19 12 **Q** Last one of these red flags I want to talk to you
10:05:22 13 about is patients who pay cash.

10:05:24 14 Is that sometimes a red flag if somebody comes in with
10:05:27 15 a wad of \$20 bills to pay for their prescription?

10:05:29 16 **A** Of course, yes. Sometimes it is.

10:05:31 17 **Q** Is it always a red flag?

10:05:33 18 **A** No.

10:05:34 19 **Q** Under what circumstances would you consider cash
10:05:37 20 payment not even a red flag?

10:05:39 21 **A** So sometimes people just don't have insurance.
10:05:43 22 They've lost a job, they've been laid off, especially in the
10:05:50 23 pandemic; a lot of people just aren't working. And so all
10:05:52 24 of their prescriptions might be for cash.

10:05:54 25 So you can easily go through the history and see

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10:05:57 1 patients are paying cash for everything if they're getting
10:06:00 2 their blood pressure medication, their diabetes medication,
10:06:04 3 their amoxicillin for a, you know, an infection for cash,
10:06:09 4 then of course, it's not going to raise a red flag for also
10:06:11 5 a pain medication to be paid for in cash.

10:06:14 6 **Q** If I used Blue Cross for all my other prescriptions
10:06:17 7 but I insist on paying cash for oxycodone, does that raise
10:06:20 8 some questions for you?

10:06:21 9 **A** Right. Then that's going to raise a red flag for me,
10:06:23 10 of course.

10:06:25 11 **Q** All right. Let's shift gears a little bit and talk
10:06:29 12 about refusals to fill.

10:06:34 13 When you have a real red flag -- because we've talked
10:06:37 14 about situations where you said sometimes that's a red flag,
10:06:39 15 sometimes it's not. But you have a real red flag, you know,
10:06:42 16 a guy uses Blue Cross for everything but insists on paying
10:06:44 17 with a roll of \$20 bills for his oxycodone, or something
10:06:48 18 that may not be that dramatic, but you just can't figure out
10:06:51 19 what's going on. You can't reach the doctor and you have a
10:06:54 20 question --

10:06:54 21 **A** Um-hmm.

10:06:55 22 **Q** -- that you need the doctor to answer before you feel
10:06:58 23 comfortable.

10:06:58 24 If you have a real red flag and you can't resolve that
10:07:00 25 red flag, what do you do?

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10:07:03 1 **A** So, if I'm unable to resolve the red flag, I'm not
10:07:07 2 going to be able to fill the prescription.

10:07:09 3 **Q** How often does that happen that you find yourself not
10:07:12 4 filling a prescription?

10:07:14 5 **A** I mean, it might happen once or twice a month.

10:07:18 6 **Q** Has that always been the case in your practice?

10:07:21 7 **A** Yeah, probably. Yes.

10:07:24 8 **Q** Have you ever been disciplined at Walgreens for
10:07:29 9 refusing to fill a prescription?

10:07:30 10 **A** No.

10:07:30 11 **Q** Has any of your managers or, you know, up or down the
10:07:35 12 chain, ever complained to you because you had filled --
10:07:40 13 refused to fill a prescription?

10:07:41 14 **A** No.

10:07:41 15 **Q** Have you ever gotten pressure from anyone at Walgreens
10:07:46 16 to fill a prescription that you weren't comfortable filling?

10:07:48 17 **A** No.

10:07:50 18 **Q** Have you ever gotten pressure from anyone at Walgreens
10:07:53 19 who said you weren't filling enough controlled substances?

10:07:57 20 **A** No.

10:07:58 21 **Q** Why do you chuckle?

10:08:00 22 **A** It's just -- it's kind of silly.

10:08:04 23 **Q** Have you had times when patients got upset with you
10:08:09 24 because you wouldn't fill a prescription?

10:08:11 25 **A** Yes. Of course.

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10:08:13 1 Q And if a patient is upset with you that you refused to
10:08:17 2 fill a prescription and -- well, do they sometimes -- I
10:08:21 3 think I asked you this yesterday, do they sometimes
10:08:25 4 complain?

10:08:25 5 A Yes.

10:08:25 6 Q Do you ever get any negative feedback from the
10:08:28 7 company, from your managers or from corporate that people
10:08:30 8 are upset that you're not filling prescriptions?

10:08:33 9 A No.

10:08:36 10 Q Has your -- your refusals to fill prescriptions, has
10:08:41 11 it ever come up at review time when they're telling you, you
10:08:44 12 know, what your bonus is going to be or how you're being
10:08:47 13 rated this year?

10:08:48 14 A No.

10:08:50 15 Q Was there ever a time when you didn't feel completely
10:08:53 16 supported by the company in refusing to fill a prescription?

10:08:55 17 A No.

10:08:58 18 Q You know what I mean when I say a blanket refusal to
10:09:01 19 fill?

10:09:03 20 A Sure.

10:09:03 21 Q Well, I'll tell you what I mean just to make sure
10:09:06 22 we're talking the same language.

10:09:08 23 A Like a -- um-hmm.

10:09:09 24 Q What I mean by a blanket refusal is a pharmacist says,
10:09:12 25 "You know what, I'm not filling any more prescriptions for

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10:09:15 1 this doctor. So if you bring me a prescription from
10:09:18 2 Dr. Jones, I'm not even going to look at. I just don't fill
10:09:21 3 for Dr. Jones anymore."

10:09:23 4 That's what I mean by blanket refusal. Does that
10:09:25 5 match your understanding?

10:09:26 6 **A** Um-hmm.

10:09:27 7 **Q** At Walgreens, has the company ever told you you were
10:09:30 8 forbidden from doing a blanket refusal as Amy Stossel if you
10:09:36 9 just don't want to fill?

10:09:39 10 **A** No.

10:09:39 11 **Q** Sorry?

10:09:39 12 **A** No.

10:09:40 13 **Q** What about you in your practice; do you ever do a
10:09:43 14 blanket refusal where you say I just don't want to fill any
10:09:46 15 prescriptions for Dr. Jones anymore?

10:09:47 16 **A** I personally don't do that.

10:09:49 17 **Q** Why not?

10:09:50 18 **A** I take things on a person-to-person, case-to-case
10:09:54 19 basis. You never know what someone's facing. You never
10:09:57 20 know what their situation is or what their history is.

10:10:02 21 **Q** So even though the company would let you, you
10:10:05 22 personally, in your judgment, don't feel comfortable saying
10:10:07 23 this doctor is bad news, I don't want to fill any of his
10:10:14 24 patients?

10:10:14 25 **A** My job is to help people. There are some people who

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10:10:17 1 have legitimate medical issues who might not know that there
10:10:21 2 is a prescriber who is questionable, and they're just trying
10:10:25 3 to solve their pain issue or solve a medical issue by going
10:10:30 4 to the prescriber that they think is a good doctor.

10:10:34 5 **Q** The jury heard testimony, I guess, last week from a
10:10:38 6 gentleman from the Board of Pharmacy who said that even a
10:10:42 7 doctor like Dr. Franklin had some good patients.

10:10:46 8 Is that consistent with your experience, that even the
10:10:48 9 worst doctors can have good patients?

10:10:51 10 **A** Right. Correct.

10:10:53 11 **Q** Are you familiar with a doctor David Demangone?

10:10:56 12 **A** Yes.

10:10:57 13 **Q** Now, some of the lawyers have been calling him
10:11:00 14 Demangone. Is it Demangone or Demongone? How do you say
10:11:03 15 his name?

10:11:03 16 **A** It's Demangone.

10:11:04 17 **Q** Okay.

10:11:05 18 Have you filled prescriptions for patients of
10:11:08 19 Dr. Demangone?

10:11:09 20 **A** Yeah.

10:11:09 21 **Q** Have you refused prescriptions for patients of Dr.
10:11:13 22 Demangone?

10:11:13 23 **A** Yeah, I'm sure I have.

10:11:29 24 MR. STOFFELMAYR: Your Honor, I'm going to
10:11:30 25 give the witness Exhibit WAG-MDL-0629. I have copies for

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10:11:37 1 everybody.

10:12:03 2 BY MR. STOFFELMAYR:

10:12:04 3 **Q** Ms. Stossel, do you recognize what exhibit
10:12:08 4 WAG-MDL-2629 is?

10:12:09 5 **A** Yeah, this is just a -- like a license look up.

10:12:13 6 If you were to look on the Ohio e-license website and
10:12:19 7 you were looking up a certain prescriber or certain
10:12:24 8 pharmacist, you could get their licensure information.

10:12:27 9 **Q** Is that the kind of thing you do from time to time in
10:12:30 10 addition to what you see automatically in the system, go and
10:12:33 11 look up a prescriber?

10:12:34 12 **A** Yes.

10:12:35 13 **Q** And who is the prescriber we're looking at here?

10:12:38 14 **A** So, this is Dr. Demangone.

10:12:40 15 **Q** All right. And -- oops.

10:12:43 16 What does it show you about his license status?

10:12:47 17 **A** So it shows me that his license is active and has been
10:12:55 18 effective -- his license issue date it shows me was 1996,
10:13:02 19 and it's most effective date, it looks like it was renewed
10:13:05 20 on 3-15 of '21.

10:13:08 21 **Q** And according to this license lookup from the Ohio
10:13:12 22 Department of Medicine, I'm sorry, Ohio Medical Board, have
10:13:14 23 they ever taken any kind of action against Dr. Demangone?

10:13:20 24 **A** This says no board action.

10:13:21 25 **Q** If they had taken some kind of action against him over

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10:13:24 1 the years, would you expect to see that on one of these
10:13:27 2 license lookups?

10:13:29 3 **A** Yeah.

10:13:29 4 Actually, so if there's any action against someone, it
10:13:33 5 will say yes. And then you actually -- it has like a
10:13:36 6 hyperlink and you could click "yes" and it would take you
10:13:39 7 right to what that board action is and you would be able to
10:13:41 8 see it.

10:13:45 9 **Q** All right.

10:13:47 10 Next, Ms. Stossel, I'm going to show you an Exhibit
10:13:50 11 WAG-MDL-2630. I have copies for everybody.

10:14:14 12 And, Ms. Stossel, are you familiar with what we're
10:14:18 13 looking at when you look at Exhibit 2630?

10:14:21 14 **A** Yes.

10:14:22 15 **Q** What is it?

10:14:23 16 **A** So this is just a licensure for a pain management
10:14:28 17 clinic. This is a specific pain management clinic where
10:14:33 18 Dr. Demangone happens to work.

10:14:34 19 **Q** So did you say you recognized this as Dr. Demangone's
10:14:38 20 clinic?

10:14:38 21 **A** Correct.

10:14:38 22 **Q** And this is their -- well, the jury heard a little bit
10:14:42 23 about this from Mr. Edwards. This is the kind of license
10:14:45 24 that pain management clinics get from the Board of Pharmacy?

10:14:48 25 **A** Correct.

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10:14:48 1 **Q** And does it show how recently they've renewed the
10:14:53 2 license for Dr. Demangone's clinic?

10:14:56 3 **A** Yeah. Looks like it was just renewed back in April,
10:14:59 4 but it's been issued -- it originally was issued in 2017.

10:15:03 5 **Q** And does this reflect whether or not the Board of
10:15:06 6 Pharmacy has ever taken action against Dr. Demangone's
10:15:11 7 clinic?

10:15:11 8 **A** Right.

10:15:11 9 So again it says board action, no. So no board
10:15:15 10 action.

10:15:15 11 **Q** And similarly with the medical board lookup, you would
10:15:20 12 expect to see board actions listed here?

10:15:22 13 **A** Right. If there's any board action, it would be
10:15:24 14 listed here.

10:15:29 15 MR. STOFFELMAYR: Judge, would you like me to
10:15:31 16 keep going or take a break soon?

10:15:33 17 THE COURT: Well, we can go to about 10:30.

10:15:35 18 MR. STOFFELMAYR: Okay.

10:15:36 19 THE COURT: If there's a convenient stopping
10:15:37 20 point.

10:15:38 21 MR. STOFFELMAYR: We might be done right at
10:15:40 22 10:30. I'll shoot for that.

10:15:42 23 THE COURT: Okay.

10:15:42 24 BY MR. STOFFELMAYR:

10:15:54 25 **Q** All right. Almost at the bottom of the list.

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10:15:59 1 Are there occasions in your practice at Walgreens
10:16:02 2 where you have contacted law enforcement to let them know
10:16:05 3 about a prescription that was concerning you?

10:16:08 4 **A** Yes, many times.

10:16:09 5 **Q** When you say many times, like how often are we talking
10:16:12 6 about? A thousand times? A hundred times? Twice? What
10:16:16 7 does that mean?

10:16:17 8 **A** I would say, you know, maybe a few times a year. So
10:16:22 9 over the course of 25 years, that's many times.

10:16:26 10 **Q** A few times, times 25?

10:16:28 11 **A** Yep. Um-hmm.

10:16:29 12 **Q** I'm not very good at math either, but I'll. . .

10:16:32 13 You -- can you, I mean, give us an example -- I know
10:16:37 14 you had an example recently --

10:16:38 15 **A** Yeah, so.

10:16:39 16 **Q** -- where you worked with the police on a prescription
10:16:41 17 you were concerned about.

10:16:43 18 Could you give us an example of what kinds of things
10:16:46 19 you're talking about?

10:16:47 20 **A** Sure.

10:16:48 21 So, I mean, one example of, like, calling law
10:16:51 22 enforcement would be for a prescription that is a forged
10:16:55 23 prescription or a fake prescription. Recently, I had -- I
10:17:01 24 was working on a Sunday. I had a prescription left on my
10:17:04 25 voicemail from a veterinary clinic for a prescription for

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10:17:09 1 Tramadol for a client's dog.

10:17:12 2 **Q** Is this -- for people who don't have dogs, do dogs get
10:17:16 3 Tramadol usually?

10:17:17 4 **A** Yes, dogs sometimes get Tramadol.

10:17:22 5 **Q** It's crazy right off the bat --

10:17:22 6 **A** Right. So yeah, it's not unheard of.

10:17:22 7 Tramadol is a controlled substance. It's a Schedule
10:17:26 8 IV, so it's not like it's -- you know, it can be called in,
10:17:30 9 you know. Opioid prescriptions can't be phoned in. So,
10:17:33 10 again, for it to be phoned in, it wasn't unusual.

10:17:38 11 It was a prescription that was left on my voicemail.
10:17:40 12 It -- the caller did not leave a DEA number, which is a
10:17:46 13 requirement for a call-in prescription. For controlled
10:17:50 14 substance, you have to leave the DEA number. And then there
10:17:54 15 was something just off about it.

10:18:00 16 The caller -- sometimes I can't explain what maybe a:
10:18:04 17 Red flag might be, but get kind of the sense that something
10:18:08 18 isn't right.

10:18:11 19 And so I called to verify with this veterinary clinic
10:18:16 20 the prescription; at which point, they told me that there
10:18:19 21 was no one by this name that had called in the prescription.
10:18:22 22 There was no one by this name that was a client. And, so,
10:18:28 23 it was determined that the prescription was fraudulent.

10:18:30 24 And when the person came to pick up the prescription
10:18:34 25 for their dog, then I had -- I called law enforcement to let

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10:18:40 1 them know there was someone coming to pick up a fraudulent
10:18:43 2 prescription in my drive-through.

10:18:44 3 **Q** And -- but weren't they long gone by the time the
10:18:47 4 police got there?

10:18:48 5 **A** No. No. Actually they weren't. We stalled them.

10:18:50 6 **Q** How did you do that?

10:18:52 7 **A** So it was just a technician and myself working on that
10:18:59 8 day. I alerted the technician about the name of the person
10:19:02 9 who would be coming to pick up, and when they got there, we
10:19:08 10 told them the price of the medication was, you know, this
10:19:11 11 amount of money, but would they like me to look up the cost
10:19:17 12 of the medication with one of the Good RX cards to save them
10:19:21 13 a little bit of money. And they said yes, of course.
10:19:26 14 They -- no one wants to pay the full price for a medication,
10:19:28 15 if possible.

10:19:30 16 We did that. We were able to stall them.

10:19:33 17 **Q** How long did you have to pretend to look up Good RX
10:19:36 18 pricing until the police got there?

10:19:38 19 **A** You know, it was probably -- Willoughby police are
10:19:42 20 great. So it probably was under, you know -- it felt like
10:19:46 21 forever, but it was probably under 10 minutes.

10:19:48 22 **Q** Is that the first or the only time you've worked
10:19:52 23 directly with police to help them -- help them apprehend
10:19:56 24 somebody?

10:19:56 25 **A** No, not at all.

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10:19:57 1 **Q** On occasions, I assume you've given them information
10:20:01 2 but they haven't brought down the offenders in the
10:20:04 3 drive-through or inside the store; correct?

10:20:06 4 **A** Correct. Correct.

10:20:08 5 **Q** Law enforcement ever come to the store looking for
10:20:11 6 information, asking for your help with prescriptions for a
10:20:14 7 doctor or a patient they're looking at?

10:20:16 8 **A** Yeah. Sometimes they will come in and request to
10:20:20 9 photocopy prescriptions or looking for something.

10:20:25 10 **Q** Has Walgreens ever done anything to discourage you
10:20:28 11 from reporting misconduct or from helping law enforcement
10:20:30 12 when they show up?

10:20:32 13 **A** No.

10:20:34 14 **Q** Last thing I want to ask you about is drug disposal.
10:20:38 15 Why is drug disposal so important?

10:20:41 16 **A** Well, it's really great because it can keep opioids
10:20:45 17 out of the hands of other people who shouldn't be taking
10:20:48 18 them, especially -- I mean, I told you guys yesterday, I
10:20:54 19 have kids. So, you know, the last thing I would want is for
10:20:59 20 my kids to be somewhere and get their hands on someone's
10:21:02 21 grandma's opioids in the pantry that they haven't used and,
10:21:09 22 you know, experiment with something they shouldn't.

10:21:12 23 **Q** At your store on SOM Center Road, do you have one of
10:21:15 24 those take-back kiosk machines or -- not a machine, but it
10:21:20 25 looks like a huge book return thing bolted onto the floor?

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10:21:23 1 **A** Yeah. Yeah.

10:21:24 2 So we have a medication, like take-back kiosk and,
10:21:28 3 yes, it looks like a library book return. It's like a big
10:21:32 4 metal box.

10:21:35 5 **Q** Do people actually use it?

10:21:37 6 **A** People use it all day long at my store.

10:21:40 7 **Q** How -- I mean, it's pretty big. How often does it --
10:21:43 8 how long does it take to fill out up at a busy store like
10:21:47 9 yours?

10:21:48 10 **A** It fills up about -- they come to -- they come to
10:21:51 11 change out the contents inside about every seven to ten days
10:21:56 12 at my store.

10:21:57 13 **Q** Do you know what happens to all those medications? Do
10:21:59 14 they get recycled somehow, reused?

10:22:02 15 **A** No, not at all.

10:22:03 16 We asked them when they started coming and we got the
10:22:06 17 box installed, and the contents actually get incinerated.

10:22:09 18 **Q** Did you say incinerated?

10:22:10 19 **A** Incinerated, um-hmm.

10:22:12 20 **Q** Okay.

10:22:12 21 Now, if I wanted to drop off medications at a -- at
10:22:18 22 your store, for example, in the box, do you charge me to do
10:22:24 23 that?

10:22:24 24 **A** No.

10:22:25 25 **Q** Do I have to at least show you that I'm a Walgreens

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10:22:27 1 patient?

10:22:27 2 **A** No, not at all. You can -- anyone can come in,
10:22:31 3 anywhere.

10:22:31 4 **Q** So I can fill my prescription at Rite Aid or
10:22:34 5 Giant Eagle and dispose it at your Walgreens?

10:22:35 6 **A** Correct.

10:22:36 7 **Q** And last thing.

10:22:37 8 There are -- some Walgreens stores or plenty of
10:22:41 9 Walgreens stores that don't have one of these kiosks that
10:22:44 10 we're talking about; right?

10:22:45 11 **A** Um-hmm.

10:22:46 12 **Q** Is that right?

10:22:46 13 **A** Right. That's correct. Yes.

10:22:48 14 **Q** At a Walgreens store where you don't have one of those
10:22:51 15 kiosks, does Walgreens have anything else they offer to
10:22:54 16 patients to help them get rid of unwanted medications?

10:22:56 17 **A** Yes.

10:22:57 18 So, Walgreens also offers these little packets called
10:23:01 19 RX disposal. We have them at the specialty store I work at.
10:23:07 20 They're little packets.

10:23:09 21 You dump the packet into, like, a bottle of pills and
10:23:15 22 it hardens up like cement so that the medication cannot be
10:23:18 23 used again. And then you can dump it in with your regular
10:23:22 24 trash.

10:23:22 25 **Q** At that point, it's safe to throw in the trash?

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10:23:25 1 **A** Correct.

10:23:25 2 **Q** How much do you charge for those packets?

10:23:26 3 **A** Nothing. They're free.

10:23:28 4 MR. STOFFELMAYR: All right, Ms. Stossel.

10:23:29 5 Thank you so much.

10:23:30 6 Your Honor, I pass the witness, and we're probably at
10:23:32 7 the break time.

10:23:33 8 THE COURT: Okay.

10:23:34 9 I think it's a good time for our mid-morning break.
10:23:38 10 Fifteen minutes. Then we'll pick up with the balance of
10:23:40 11 Ms. Stossel's testimony.

10:23:43 12 (Jury excused from courtroom.)

10:25:04 13 (Off-record discussion.)

10:25:04 14 THE COURT: The parties have worked out
10:25:08 15 P00459, P06672, and P20695.

10:25:31 16 (Recess was taken from 10:25 a.m. till 10:43 a.m.)

10:43:27 17 COURTROOM DEPUTY: All rise.

10:43:53 18 MR. STOFFELMAYR: Judge, may I raise one issue
10:43:55 19 before the jury comes in?

10:43:56 20 THE COURT: Okay. Yes.

10:43:57 21 MR. STOFFELMAYR: This relates -- a little bit
10:44:01 22 to the discussion this morning. It can't possibly be me.

10:44:11 23 I don't know if you want the witness in the room since
10:44:22 24 Ms. Stossel's been on the stand --

10:44:23 25 Since Ms. Stossel's been on the stand this morning, we

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10:44:38 1 received a revised witness list. The rule is 7:00 p.m. the
10:44:42 2 night before for new exhibits that were not on the original
10:44:46 3 exhibit list. So I don't think it's fair to examine her on
10:44:50 4 exhibits disclosed --

10:44:51 5 THE COURT: We'll have to do this another
10:44:53 6 time.

10:44:55 7 (Jury returned to courtroom.)

10:45:14 8 THE COURT: All right. Please be seated. I
10:45:16 9 guess we got to go on the headphones for a minute.

10:45:23 10 (Proceedings at sidebar.)

10:45:34 11 THE COURT: Mr. Stoffelmayr, you were talking
10:45:35 12 about a revised witness list.

10:45:38 13 MR. STOFFELMAYR: I'm sorry.

10:45:39 14 THE COURT: Did you mean exhibit list?

10:45:40 15 MR. STOFFELMAYR: I meant exhibit list, you're
10:45:43 16 right. We received a revised exhibit list while I was
10:45:46 17 questioning Ms. Stossel.

10:45:47 18 Obviously, I haven't had a chance to review, but the
10:45:49 19 rule is 7:00 p.m. the night before for documents to be used
10:45:52 20 on cross-examination.

10:45:54 21 THE COURT: Well, unless it's for impeachment,
10:45:56 22 so I don't know.

10:45:57 23 MR. LANIER: And that's what it is.

10:45:58 24 Your Honor, Ms. Fitzpatrick made the decision that
10:46:01 25 there's a good likelihood I'll need to use those, and she

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10:46:04 1 made the decision to let's go ahead and add them to the list
10:46:07 2 so that the other side will know. But hopefully I won't
10:46:10 3 need to impeach her on them and I won't use them at all.

10:46:13 4 But I didn't have to list them last night if I use
10:46:15 5 them for impeachment and we'll just have to see if she gives
10:46:18 6 me the testimony or if I need to impeach her.

10:46:21 7 THE COURT: All right.

10:46:21 8 MR. STOFFELMAYR: That's actually not the way
10:46:23 9 the order is written. The 7:00 p.m. disclosure is for all
10:46:26 10 documents not on the exhibit list. The impeachment
10:46:29 11 exception permits that they may not have been on the exhibit
10:46:31 12 list but it doesn't excuse disclosing --

10:46:35 13 MR. LANIER: Actually, Your Honor, you saw
10:46:37 14 that this morning. It's the first sentence.

10:46:39 15 THE COURT: I saw the language. Let's just
10:46:41 16 move on, please.

10:46:42 17 MR. STOFFELMAYR: Thank you.

10:46:44 18 (Proceedings resumed in open court.)

10:46:44 19 THE COURT: Okay.

10:46:45 20 Ms. Stossel, I just want to remind you you are still
10:46:47 21 under oath from before the break. And, Mr. Lanier, you may
10:46:52 22 cross-examine.

10:46:53 23 MR. LANIER: Thank you, Your Honor.

10:46:53 24

25

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10:46:53 1 CROSS-EXAMINATION OF AMY STOSSEL

10:46:54 2 BY MR. LANIER

10:46:54 3 **Q** Hello, Ms. Stossel. My name is Mark Lanier. It's a
10:46:57 4 pleasure to meet you.

10:46:58 5 I've not met you before. Fair?

10:47:00 6 **A** Correct.

10:47:01 7 **Q** All right.

10:47:02 8 I've got some questions for you. I've got a road map,
10:47:05 9 but before we get to the road map, I want to try something
10:47:09 10 out here.

10:47:12 11 First of all, I have evidently being saying Mr.
10:47:17 12 Demangone's name wrong. How do you pronounce it?

10:47:21 13 **A** Demangone.

10:47:21 14 **Q** Demangone?

10:47:23 15 **A** Um-hmm.

10:47:24 16 **Q** Got it. Dr. Demangone.

10:47:28 17 Are you familiar with this (indicating)?

10:47:30 18 **A** I'm sorry. I can't --

10:47:31 19 **Q** Can you see it? Here, I'll put it on the ELMO, or the
10:47:34 20 WolfVision.

10:47:38 21 It's a water bottle. Juan cut off the top.

10:47:43 22 **A** Oh, okay.

10:47:43 23 **Q** Yeah.

10:47:44 24 Now, if I wanted to take a bunch of paper clips and
10:47:48 25 put them in there, I could do that. But it's not real easy

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10:47:55 1 just to take them and put them in like that, is it?

10:48:00 2 You know what would help me substantially?

10:48:04 3 **A** Okay.

10:48:05 4 **Q** You got any clue what might help me?

10:48:08 5 **A** I'm not certain.

10:48:09 6 **Q** A funnel. Made one out of card stock.

10:48:14 7 Look, you take a funnel, you could put them right
10:48:18 8 there. You might have to shake it a little bit, but they
10:48:23 9 all go in.

10:48:24 10 Do you see that? I'm sorry, I can't hear you. Can
10:48:30 11 you see that?

10:48:31 12 **A** I can see that, yes.

10:48:32 13 **Q** Okay.

10:48:34 14 Y'all at Walgreens are the funnel for the
10:48:40 15 prescriptions of Dr. Demangone, aren't you?

10:48:46 16 **A** So we fill prescriptions for a lot of different
10:48:50 17 doctors; Dr. Demangone being one of them.

10:48:52 18 **Q** Um-hmm.

10:48:52 19 And I say that because we saw an exhibit that was
10:48:55 20 entered into evidence the other day that Dr. Demangone keeps
10:48:59 21 his picture in his window these days. It's CVS 4243.

10:49:07 22 "Until further notice, do not fill prescriptions at
10:49:10 23 CVS and Walmart."

10:49:12 24 Did you know that's in his window?

10:49:14 25 **A** I've never been to his office. I didn't know that's

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10:49:18 1 in his window.

10:49:22 2 **Q** But it's okay to go fill them at Walgreens because you
10:49:25 3 personally will fill them, won't you?

10:49:29 4 **A** I have filled prescriptions for Dr. Demangone at my
10:49:32 5 store.

10:49:32 6 **Q** Well, you've not only filled them, you have filled
10:49:35 7 more prescriptions for Dr. Demangone than you have for any
10:49:40 8 other doctor; more opiate prescriptions than you have any
10:49:43 9 other doctor.

10:49:45 10 True?

10:49:47 11 **A** I don't have that information.

10:49:49 12 **Q** Would you be surprised to find out that you have
10:49:51 13 personally filled over 25,000 dosage units for
10:49:57 14 Dr. Demangone?

10:49:58 15 **A** No, I probably wouldn't.

10:49:59 16 **Q** And when we talk about the funnel, did you know that
10:50:07 17 Walgreens has filled over 2.7 million dosage units of this
10:50:15 18 doctor that's got a block at CVS and Walmart now?

10:50:22 19 **A** I wouldn't have that information.

10:50:24 20 **Q** All right.

10:50:28 21 And you say you wouldn't have that information. Does
10:50:31 22 Walmart not -- I mean, does Walgreens, excuse me,
10:50:37 23 Mr. Majoras -- does Walgreens not tell you how many
10:50:40 24 prescriptions y'all are filling for this doctor?

10:50:44 25 **A** I would not get that information from Walgreens, no.

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10:50:48 1 **Q** Would it not occur to you you did not know that other
10:50:52 2 chain pharmacies had put him on a block?

10:50:57 3 **A** No.

10:51:00 4 **Q** Okay.

10:51:01 5 Well, then here's the -- by the way, you are something
10:51:06 6 not any other witness in this trial has ever been after all
10:51:10 7 these weeks. Did you know that? You're the last witness.

10:51:15 8 Nothing nefarious. You're the last witness. Nobody
10:51:18 9 else can be the last witness if you are.

10:51:21 10 So I've got some questions for you, but I'm going to
10:51:24 11 try to move through with some haste so that we can finish
10:51:29 12 your examination. Okay?

10:51:30 13 **A** Sure.

10:51:30 14 **Q** And, Ms. Stossel, the road map I've got for you are
10:51:33 15 three stops, and these are my words for the way I see the
10:51:37 16 world. I don't expect anybody to agree with me from you or
10:51:40 17 Walgreens.

10:51:42 18 But stop Number 1, I want to talk about a couple of
10:51:46 19 bad questions.

10:51:47 20 Stop Number 2, we're going to talk about bad timing.

10:51:51 21 And Stop Number 3, we're going to talk about bad
10:51:54 22 results. Okay?

10:51:56 23 **A** Sure.

10:51:57 24 **Q** All right. Let's start then with the bad questions.

10:52:06 25 The Walgreens attorney, Mr. Stoffelmayr, asked you

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10:52:12 1 some questions yesterday and he started out in an
10:52:17 2 introduction. And he made a reference to others who may
10:52:22 3 have held the job, sort of obliquely, but then he said to
10:52:26 4 you, "You will be the first time the jurors have actually
10:52:29 5 met a real live working Walgreens pharmacist."

10:52:35 6 Do you remember that from Mr. Stoffelmayr?

10:52:38 7 **A** Yes.

10:52:38 8 **Q** Now, you're certainly not the first time the jury's
10:52:42 9 met a real live working Walgreens pharmacist, at least in
10:52:47 10 terms of people who had previously held that job.

10:52:50 11 You understand that?

10:52:51 12 **A** Okay.

10:52:52 13 **Q** And so, for example, the jury heard Mr. Weinberger
10:52:59 14 take on examination Brian Joyce.

10:53:02 15 Do you know Mr. Joyce?

10:53:03 16 **A** I've met Mr. Joyce before.

10:53:04 17 **Q** And did you know that he maintains a pharmacy license
10:53:07 18 and actually works as a pharmacist in a number of different
10:53:10 19 stores?

10:53:10 20 **A** Okay.

10:53:11 21 **Q** Is that new to you?

10:53:12 22 **A** No.

10:53:14 23 **Q** So when you are answering questions as Mr. Stoffelmayr
10:53:20 24 calls you the first time the jurors have met a real life
10:53:25 25 working Walgreens pharmacist, you're not saying that there's

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10:53:29 1 anything less than reality with Mr. Joyce. Fair?

10:53:36 2 **A** No.

10:53:38 3 **Q** And by the same token, the jury heard extensively from
10:53:45 4 Tasha Polster, who was a staff pharmacist and a pharmacy
10:53:48 5 manager and a pharmacy supervisor and still maintains her
10:53:52 6 pharmacy license as well.

10:53:54 7 Do you know who Tasha Polster is?

10:53:57 8 **A** I recognize the name.

10:53:59 9 **Q** Did you know that she's actually in the home office, I
10:54:04 10 believe, trying to make sure that the policies are not only
10:54:08 11 correct, that the tools are provided, but that people follow
10:54:13 12 those policies and are trained on them?

10:54:15 13 Did you know about her job?

10:54:16 14 **A** Correct.

10:54:21 15 **Q** And then one other question I want to look at before
10:54:23 16 we move to the timing questions is you were asked by the
10:54:29 17 Walgreens attorney, is there any list of circumstances where
10:54:34 18 you would say 100 percent of the time, that's a red flag and
10:54:38 19 I'm uncomfortable. And your answer was no.

10:54:41 20 Are you sure about that?

10:54:42 21 **A** I'm sure.

10:54:43 22 **Q** All right.

10:54:44 23 So it would not bother you if the patient is visibly
10:54:48 24 intoxicated. Fair?

10:54:52 25 **A** I don't think that that's true. If the patient's

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10:54:54 1 visibly intoxicated, that would lead to another series of
10:54:58 2 questions.

10:55:02 3 **Q** But that would not be a red flag that a hundred
10:55:06 4 percent of the time, you're not going to dispense.

10:55:08 5 Fair?

10:55:08 6 **A** It would, of course, be a red flag.

10:55:10 7 **Q** Would it be one that says to you, I'm not dispensing
10:55:14 8 to this person who's tanked right now?

10:55:16 9 **A** It would be a red flag to me.

10:55:18 10 **Q** I'm not asking if it's a red flag. I'm asking if it's
10:55:21 11 one that would stop -- an unresolvable red flag, as the DEA
10:55:26 12 calls it, where you can't resolve it and dispense.

10:55:29 13 **A** It would quite possibly be an unresolvable red flag.

10:55:34 14 **Q** So in answer to Mr. Stoffelmayr's question, "Is there
10:55:38 15 any list of circumstances where you'd say a hundred percent
10:55:40 16 of the time, that's a red flag," you said no, maybe we
10:55:45 17 should change that.

10:55:46 18 Fair?

10:55:48 19 **A** I think I still stick by my answer.

10:55:50 20 **Q** All right.

10:55:51 21 So a hundred percent of the time, you won't say that
10:55:53 22 if somebody is fall-down drunk, that that stops you from
10:55:59 23 giving him opiates. Fair?

10:56:01 24 **A** I think if someone's falling down drunk, I'm not going
10:56:04 25 to dispense opiate prescriptions to them.

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10:56:06 1 **Q** Okay.

10:56:06 2 So in that situation, you can say that at least that
10:56:10 3 100 percent of the time, that's a red flag.

10:56:12 4 Fair?

10:56:13 5 **A** So that is a red flag, correct.

10:56:15 6 **Q** What if a person's demonstrating withdrawal symptoms?

10:56:19 7 **A** So I think it's kind of hard to visibly tell whether
10:56:24 8 someone is having withdrawal symptoms if they're presenting
10:56:30 9 to your pharmacy counter.

10:56:31 10 **Q** So you may not know.

10:56:32 11 What if someone presents two of the exact same opioid
10:56:36 12 prescriptions, they give you two prescriptions for two
10:56:42 13 30-day doses of the same OxyContin? Would that be a
10:56:50 14 100 percent of the time red flag?

10:56:51 15 **A** So you're not going to fill two prescriptions for two
10:56:54 16 OxyContin prescriptions at the same time.

10:56:55 17 **Q** What if they were written by different doctors?

10:56:59 18 **A** But you still are not going to fill two prescriptions
10:57:02 19 for two OxyContin at the same time.

10:57:04 20 **Q** What if they were written a day apart?

10:57:07 21 **A** You're not going to fill two prescriptions.

10:57:09 22 **Q** So you would say that that's a circumstance where a
10:57:12 23 hundred percent of the time, it's a red flag? Fair?

10:57:15 24 **A** That's fair.

10:57:16 25 **Q** What about a fraudulent prescription? Isn't that

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10:57:20 1 100 percent of the time something you won't dispense?

10:57:25 2 **A** Correct.

10:57:26 3 **Q** What about a doctor who's prescribing an obscene
10:57:30 4 amount of opioids as the Ohio Board of Pharmacy
10:57:37 5 ex-investigator said, "enough to kill an elephant,"
10:57:41 6 quote/unquote?

10:57:42 7 Would that be a red flag that's a hundred percent of
10:57:44 8 the time a red flag to you?

10:57:45 9 **A** No.

10:57:46 10 MR. STOFFELMAYR: Objection.

10:57:47 11 **Q** No?

10:57:48 12 THE COURT: Overruled.

10:57:49 13 **Q** Did you just say no?

10:57:50 14 **A** No.

10:57:52 15 **Q** Okay. What if someone is clearly doctor shopping?

10:57:58 16 If they are clearly doctor shopping, it's obvious from
10:58:03 17 OARRS, is that 100 percent of the time a red flag to you
10:58:05 18 that would stop you from dispensing?

10:58:07 19 **A** It would be a red flag.

10:58:08 20 **Q** But 100 percent of the time, is it one that you say no
10:58:12 21 to?

10:58:13 22 **A** It would have to be a clear -- it would have to be
10:58:17 23 clearly that they were doctor shopping. You can't always
10:58:21 24 tell from OARRS whether someone is doctor shopping or
10:58:25 25 whether someone is seeing different physicians for different

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10:58:28 1 things.

10:58:29 2 **Q** Yeah.

10:58:30 3 I think people clearly have figured out how to game
10:58:33 4 the system some. Wouldn't you agree with that?

10:58:36 5 **A** No, I don't -- I don't think that that's true.

10:58:39 6 There's --

10:58:39 7 **Q** Okay.

10:58:41 8 Let's go then to the next stop on the road, which is
10:58:43 9 bad timing.

10:58:46 10 And one of the joys for you and the jury as we go
10:58:51 11 through this, the jury has sat through weeks and weeks and
10:58:53 12 week, they have asked incredible questions that show I could
10:58:57 13 sit down, they could do my cross for me, but it allows us to
10:59:01 14 go pretty quickly through here because I don't need to
10:59:03 15 rehash everything fully.

10:59:05 16 Okay?

10:59:05 17 **A** Sure.

10:59:05 18 **Q** All right. So bad timing.

10:59:08 19 You gave a lot of testimony about a lot of things
10:59:21 20 going on at Walgreens, the way you do things, et cetera;
10:59:27 21 right?

10:59:27 22 **A** Yes.

10:59:27 23 **Q** What I'd like do at the first part of this is make it
10:59:32 24 real clear, based upon your answers, if there be any doubt
10:59:37 25 in the jury's mind, you are testifying that the law has not

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10:59:42 1 been evolving when it comes to issues of red flags and how
10:59:46 2 you handle them; rather, Walgreens compliance has been
10:59:55 3 evolving.

10:59:56 4 Is that fair to say?

10:59:57 5 MR. STOFFELMAYR: Objection.

10:59:58 6 THE COURT: Overruled.

11:00:01 7 From her understanding.

11:00:04 8 MR. LANIER: Yeah.

11:00:04 9 THE COURT: She can testify to that.

11:00:05 10 MR. LANIER: Thank you, Your Honor.

11:00:06 11 THE WITNESS: So I think neither -- neither
11:00:09 12 the law has been evolving nor the compliance has been
11:00:17 13 evolving.

11:00:17 14 BY MR. LANIER:

11:00:17 15 **Q** Okay. Fair.

11:00:18 16 **A** I've been doing the same thing in my 25 years at
11:00:21 17 Walgreens as far as red flags are concerned.

11:00:23 18 **Q** You don't do it any differently today than you did
11:00:26 19 25 years ago, do you?

11:00:27 20 **A** That's correct.

11:00:28 21 **Q** You haven't learned anything new, you haven't got
11:00:32 22 anything new to apply. You've been doing it the same way
11:00:36 23 for 25 years.

11:00:37 24 Fair?

11:00:37 25 **A** As far as red flags are concerned, those red flags

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11:00:40 1 have not changed in the 25 years that I've worked at
11:00:44 2 Walgreens.

11:00:45 3 **Q** So the 1998 good faith practicing exhibit that you and
11:00:56 4 Mr. Stoffelmayr set in front of this jury as Exhibit 304 --
11:01:02 5 whoops, no.

11:01:04 6 MR. STOFFELMAYR: 18.

11:01:05 7 BY MR. LANIER:

11:01:06 8 **Q** It was exhibit -- hold on.

11:01:08 9 MR. STOFFELMAYR: 18.

11:01:11 10 MR. LANIER: MDL 18.

11:01:13 11 **Q** Remember this?

11:01:14 12 **A** Yes.

11:01:15 13 **Q** There's no reason this couldn't have been done years
11:01:18 14 earlier. True?

11:01:23 15 **A** As far as what? As far as the policy?

11:01:25 16 **Q** Yeah. Because this is stuff you'd known since school,
11:01:30 17 right?

11:01:31 18 **A** But I'm -- but I'm still practicing with these red
11:01:42 19 flags, the minute that I got out of school, the minute I'm
11:01:45 20 in school. I don't need a policy to tell me that I need to
11:01:49 21 be aware of red flags.

11:01:51 22 **Q** No. But that's not my point, ma'am.

11:01:53 23 The company put this policy out in 1998, and it's your
11:02:00 24 testimony to the jury the company could have put this out
11:02:03 25 years earlier because you already knew all this stuff;

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11:02:07 1 right?

11:02:09 2 **A** But I -- I don't work for the part of the company that
11:02:13 3 makes the policies.

11:02:14 4 **Q** That wasn't my question, ma'am.

11:02:16 5 My question is, from your perspective, this could have
11:02:19 6 been done earlier because you knew about this stuff long
11:02:24 7 before this, didn't you?

11:02:27 8 **A** I've always known about this information, but I
11:02:29 9 don't -- I don't know about the other part.

11:02:32 10 **Q** So the idea of the company issuing this as a revised
11:02:37 11 version in 1998, there's no reason that you can think of why
11:02:43 12 the company shouldn't have done it earlier.

11:02:45 13 Fair?

11:02:46 14 **A** Sure.

11:02:47 15 **Q** All right.

11:02:49 16 So 1998, good faith practices could have been earlier?
11:02:53 17 By the same token, in 2012 the company issued WAG
11:03:01 18 Document 304, which was this controlled substance
11:03:07 19 prescriptions and Good Faith Dispensing Policy; correct?

11:03:12 20 **A** Correct.

11:03:13 21 **Q** And it's your testimony to the jury the company didn't
11:03:18 22 need to wait until 2012 to do this; the company could have
11:03:24 23 done this in the mid '90s; right?

11:03:29 24 **A** No.

11:03:30 25 My testimony is that I've always been doing this.

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11:03:33 1 I -- I don't have any idea what the company could or
11:03:36 2 couldn't do prior to 2012.

11:03:38 3 **Q** Well, in terms of having the knowledge to do it,
11:03:41 4 you're saying that this is knowledge that the company
11:03:44 5 certainly would have had. They could have just asked you
11:03:48 6 because this is stuff you were doing from the mid 1990s.

11:03:52 7 Nothing new here; correct?

11:03:54 8 **A** But I just work at the store. I don't work at the
11:03:57 9 corporate office. So I don't have any idea what their
11:04:00 10 practices were there. I don't -- I don't have any bearing
11:04:04 11 on that.

11:04:07 12 **Q** So does what the company policies are that issue from
11:04:12 13 home office, do they not affect you on the store level?

11:04:16 14 **A** Of course company policies affect me at the store
11:04:19 15 level.

11:04:19 16 **Q** And you understand those policies are there to train
11:04:23 17 and to reinforce Good Faith Dispensing; right?

11:04:31 18 **A** Correct, but I've been doing Good Faith Dispensing
11:04:34 19 since I got my pharmacy license.

11:04:35 20 **Q** In your mind, that's what -- all right. Time out.
11:04:39 21 Strike that, Your Honor.

11:04:40 22 I will talk about your dispensing in a moment, but
11:04:46 23 right now, I just want to make sure that everyone is
11:04:50 24 abundantly clear. It's your testimony that there's nothing
11:04:53 25 in here (indicating), Exhibit 304, that you didn't know

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11:04:58 1 about 15-plus years earlier. Fair?

11:05:04 2 **A** Sure.

11:05:05 3 **Q** Okay.

11:05:14 4 Now, as we continue to walk through this, you
11:05:18 5 understand that the company did get in a substantial amount
11:05:22 6 of trouble because of its practices at various pharmacies;
11:05:27 7 correct?

11:05:28 8 **A** I don't have that information.

11:05:30 9 **Q** I'm sorry?

11:05:31 10 **A** I don't have that information.

11:05:32 11 **Q** You didn't know about the settlement agreements your
11:05:37 12 company entered into with the DEA while you were practicing
11:05:40 13 at the company?

11:05:41 14 **A** No.

11:05:43 15 **Q** The jury will recall when they heard from Tasha
11:05:49 16 Polster that Tasha Polster said that periodic training of
11:05:54 17 all Walgreens employees for dispensing controlled
11:05:58 18 substances, that training didn't exist in 2010.

11:06:03 19 Do you recall being trained on that while at Walgreens
11:06:08 20 before 2010?

11:06:12 21 **A** I don't know.

11:06:16 22 **Q** And when Ms. Polster testified about the agreement
11:06:23 23 that was reached with the DOJ and the DEA in January,
11:06:27 24 February, March, April of '11, again, that's something they
11:06:32 25 never told you about and you didn't know about it.

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11:06:35 1 Fair?

11:06:36 2 **A** Yeah, I don't have that information.

11:06:38 3 **Q** And the idea that your company's policies needed
11:06:43 4 updating in the 2012 range, that's something that's new to
11:06:48 5 you also.

11:06:48 6 Fair?

11:06:49 7 MR. STOFFELMAYR: Objection.

11:06:50 8 THE COURT: Overruled.

11:06:53 9 THE WITNESS: I -- I don't have information at
11:06:55 10 the store level about company policies or when they make
11:06:59 11 them or -- or what they're doing with company policies.

11:07:03 12 BY MR. LANIER:

11:07:04 13 **Q** But when they're building from the ground up, to
11:07:10 14 develop, change, and improve policies and procedures around
11:07:14 15 controlled substance dispensing, that is certainly a matter
11:07:17 16 that does affect you on the store level, doesn't it?

11:07:21 17 MR. STOFFELMAYR: Objection. It
11:07:27 18 mischaracterizes.

11:07:28 19 THE COURT: Overruled.

11:07:28 20 THE WITNESS: Of course policies affect me at
11:07:29 21 the store level.

11:07:31 22 BY MR. LANIER:

11:07:31 23 **Q** And procedures around controlled substance dispensing,
11:07:33 24 that only happens at a store level, doesn't it?

11:07:39 25 **A** Procedures do happen at the store level, yes.

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11:07:41 1 **Q** And the dispensing happens at a store level. They
11:07:44 2 don't dispense out of the home office, do they?

11:07:47 3 **A** That's correct.

11:07:54 4 **Q** And so when Ms. Polster came and had an entire box of
11:07:58 5 refusals to fill, paper copies that she came in here and
11:08:02 6 pointed out to the jury, did you have any chance to be
11:08:05 7 involved in putting those paper refusals to fill together
11:08:08 8 for her?

11:08:09 9 **A** No.

11:08:11 10 **Q** In those, the jury had a chance to see plaintiffs'
11:08:16 11 22946, which is a refusal to fill document. It shows an
11:08:23 12 OARRS report attached with a number of different fills at
11:08:27 13 Walgreens.

11:08:29 14 Did you bother to look at any of those paper refusals
11:08:32 15 to fill before you offered your testimony about how you've
11:08:39 16 done it at yours, understanding you had no obligation to do
11:08:43 17 so? I'm just asking if you did so.

11:08:45 18 **A** I don't have any information about Ms. Polster's
11:08:48 19 testimony.

11:08:54 20 **Q** Okay.

11:08:54 21 Among that box was a sheet that asked this question.
11:08:56 22 This is Plaintiffs' Exhibit 17260. Do we still have a GFD
11:09:02 23 refusal folder? Couldn't find it.

11:09:06 24 Do you have one in your store?

11:09:08 25 **A** There is one my store.

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11:09:09 1 **Q** And is it behind the counter where you are?

11:09:12 2 **A** It is in a Bankers Box in our pharmacy.

11:09:16 3 **Q** In the pharmacy. Is it under lock and key?

11:09:18 4 **A** No.

11:09:27 5 **Q** Now, in terms of the timing issue, while we've covered
11:09:30 6 the idea that there's no reason why these policies couldn't
11:09:34 7 have been in place earlier, I want to ask you about some of
11:09:36 8 them that are in place now and some of the tools in place
11:09:39 9 now.

11:09:39 10 Okay?

11:09:40 11 **A** Sure.

11:09:41 12 **Q** So you spoke about steps to fill prescriptions. I
11:09:46 13 think it was this document here (indicating)?

11:09:48 14 **A** Um-hmm.

11:09:49 15 **Q** Remember?

11:09:50 16 **A** Yes.

11:09:51 17 **Q** Now, this is the steps to do it today; correct?

11:09:54 18 **A** Correct.

11:09:55 19 **Q** This is not the steps to fill a controlled substance
11:10:00 20 prescription 10 years ago, 20 years ago, or 25 years ago.

11:10:06 21 Fair?

11:10:09 22 **A** It -- it actually -- it actually is the same.

11:10:14 23 **Q** Well, you say it's the same. There's a whole
11:10:19 24 different set of tools involved. For example, Good Faith
11:10:26 25 Dispensing review.

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11:10:26 1 Do you see that?

11:10:27 2 **A** Correct, but I'm not sure what you're meaning by new
11:10:32 3 tool for that.

11:10:33 4 **Q** Well, what I'm meaning is, Tasha Polster told us that
11:10:38 5 the Good Faith Dispensing was rolled out in April of 2013.

11:10:46 6 MR. STOFFELMAYR: Objection.

11:10:47 7 BY MR. LANIER:

11:10:47 8 **Q** The Target Drug Good Faith Dispensing -- excuse me.
11:10:51 9 Is that true?

11:10:52 10 **A** I've been doing Good Faith Dispensing since I got my
11:10:56 11 pharmacy license. I don't think that there was a specific
11:11:01 12 year that Good Faith Dispensing was rolled out.

11:11:05 13 **Q** Well, let me show you a document that we used with
11:11:09 14 her. It's Plaintiffs' Exhibit 17177, and the jury's seen
11:11:24 15 this. So I won't spend a lot of time on it. But it speaks
11:11:27 16 of the National Target Drug Good Faith Dispensing Policy
11:11:32 17 that's intended to be a supplemental policy which will aid
11:11:37 18 pharmacists in determining if a controlled substance
11:11:40 19 prescription for a specific subset of narcotics has been
11:11:45 20 written for a legitimate medical purpose.

11:11:47 21 Do you see where it says that?

11:11:49 22 **A** Correct.

11:11:49 23 **Q** This policy will aid in strengthening DEA regulations
11:11:54 24 that state the pharmacist has a corresponding
11:12:01 25 responsibility.

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11:12:01 1 Do you see that as well?

11:12:02 2 **A** Yes.

11:12:02 3 **Q** And it talks about this rollout happening in the
11:12:07 4 National Target Good Faith Dispensing Policy is in effect as
11:12:11 5 of April 2013.

11:12:14 6 Do you see that, ma'am?

11:12:15 7 **A** I do.

11:12:16 8 **Q** So there's certainly been some changes that have taken
11:12:19 9 place over the years.

11:12:21 10 Fair?

11:12:22 11 **A** Sure.

11:12:23 12 **Q** And by the same token, while you can do today with Mr.
11:12:31 13 Stoffelmayr, there are also some other things that you
11:12:34 14 showed the jury that are applicable today as opposed to
11:12:38 15 earlier.

11:12:38 16 Fair?

11:12:41 17 **A** I'm not sure what you're meaning.

11:12:43 18 **Q** Well, what I'm talking about is these screenshots you
11:12:47 19 gave us. Remember the screenshots?

11:12:51 20 **A** Yes.

11:12:54 21 **Q** This screen process, data review?

11:12:58 22 **A** Okay.

11:12:58 23 **Q** And by the way, when I said fake, I did not mean that
11:13:01 24 this whole process is made up. I understand this is what
11:13:04 25 you do today. Right?

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11:13:06 1 **A** That's correct.

11:13:06 2 **Q** But this data is fake data (indicating). Right?

11:13:10 3 **A** Right. Just for example purposes.

11:13:13 4 **Q** Yeah. That's all I -- that's all I --

11:13:16 5 **A** We couldn't use real patient information. That would
11:13:20 6 violate HIPAA.

11:13:21 7 **Q** Yeah. I think Mr. Stoffelmayr may have taken umbrage
11:13:24 8 over me using the word "fake." I just mean this isn't real,
11:13:28 9 this is fake, isn't it?

11:13:29 10 **A** Right. It's just an example.

11:13:30 11 **Q** Right.

11:13:31 12 But this is an example of the way things are today,
11:13:34 13 isn't it?

11:13:36 14 **A** Correct. Yeah, that's when I see when I log into my
11:13:39 15 computer screen, sure.

11:13:40 16 **Q** Yeah. Today there's some really helpful tools that
11:13:43 17 you guys have; right?

11:13:46 18 **A** Sure. Yes.

11:13:53 19 **Q** But those tools didn't always exist in Walgreens
11:13:58 20 pharmacies, as the jury's heard through other witnesses.

11:14:01 21 Fair?

11:14:02 22 **A** Right, that's fair.

11:14:03 23 **Q** Then Mr. Stoffelmayr asked you about have you ever had
11:14:05 24 reason to delete anything in the notes field, and you
11:14:13 25 laughed. Remember?

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11:14:13 1 **A** I don't think I laughed about that, actually.

11:14:15 2 **Q** I thought -- I thought you specifically said you found
11:14:20 3 that funny, but maybe I'm thinking of something different.

11:14:23 4 **A** Um-hmm.

11:14:23 5 **Q** I do know that you said, "In my 25 years at Walgreens,
11:14:31 6 I've never had the occasion to remove a comment" -- hang on.
11:14:34 7 Let me highlight this. That's a joke.

11:14:38 8 I've -- "I've never had the occasion to remove a
11:14:42 9 comment for something that's important information."

11:14:47 10 You said you -- he asked, "You've never run out of
11:14:50 11 room in the patient comment field?"

11:14:52 12 Your answer was, "I've never had the occasion to
11:14:55 13 remove anything that's important."

11:15:01 14 **A** Um um-hmm.

11:15:02 15 **Q** That was before he said that -- these referencing me
11:15:05 16 saying these are fake.

11:15:06 17 My question to you is, and you'll excuse me for being
11:15:08 18 a little -- I'm going lawyer on you here?

11:15:08 19 **A** Um-hmm.

11:15:11 20 **Q** But you kind of hedged in those answers.

11:15:13 21 Have you ever deleted anything from the notes fields?

11:15:15 22 **A** I've deleted something from the notes fields
11:15:18 23 previously.

11:15:18 24 **Q** Okay. Thank you.

11:15:21 25 And you're aware of the fact that there's been a

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11:15:23 1 policy on deletions in the note field at your company;
11:15:29 2 right?

11:15:30 3 MR. STOFFELMAYR: Objection.

11:15:31 4 THE COURT: Overruled.

11:15:37 5 BY MR. LANIER:

11:15:37 6 **Q** Let me hand to you Plaintiff's Exhibit --

11:15:39 7 THE COURT: Well, she hasn't answered the
11:15:41 8 question.

11:15:41 9 MR. LANIER: Yeah.

11:15:41 10 THE COURT: So I overruled. You may answer,
11:15:43 11 ma'am.

11:15:43 12 MR. LANIER: Thank you, Judge.

11:15:44 13 THE WITNESS: I'm not -- I'm not sure what
11:15:46 14 that policy is.

11:15:47 15 BY MR. LANIER:

11:15:47 16 **Q** All right.

11:15:47 17 Then I'll hand you -- or have handed to you by
11:15:50 18 Ms. Fleming Plaintiffs' Exhibit 20801. The jury has seen
11:15:53 19 this document so we won't spend a lot of time on it, but it
11:15:57 20 goes back to 2013 where the question was asked, "Will the
11:16:01 21 patient comment field on the patient profile be expanded to
11:16:06 22 hold the usual comments plus the new Target Drug Good Faith
11:16:12 23 Dispensing comments? We are running out of room on some
11:16:16 24 patients already."

11:16:17 25 Do you see that question?

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11:16:19 1 **A** That's what I'm looking for.

11:16:22 2 **Q** It's the very first question on that bottom e-mail on
11:16:27 3 Page 1.

11:16:28 4 **A** Um-hmm.

11:16:28 5 **Q** Do you see it?

11:16:30 6 **A** Yeah, I see it now.

11:16:31 7 **Q** And then the answer is given, "Please abbreviate as
11:16:33 8 needed."

11:16:34 9 **A** Right.

11:16:34 10 **Q** "And delete older comments or refusals from the
11:16:39 11 patient profiles to keep the notes current and accurate."

11:16:43 12 Do you see that?

11:16:44 13 **A** Yes, I see that. I see the e-mail.

11:16:47 14 **Q** Yeah. Refusals. Deleting refusals to fill.

11:16:55 15 From a pharmacist's perspective, that's not a great
11:17:02 16 policy, is it?

11:17:02 17 **A** I'm not sure that that's a policy. This looks like an
11:17:04 18 e-mail.

11:17:04 19 **Q** Well, I'll --

11:17:09 20 **A** Yeah, I wasn't aware that there was a policy about
11:17:11 21 this, so. . .

11:17:13 22 **Q** Well, in that regard, why don't I show you another
11:17:16 23 one. We'll look at Plaintiffs' Exhibit 25621.

11:17:28 24 **A** I'll wait till you get it up there.

11:17:38 25 **Q** Do you have the document, ma'am?

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11:17:39 1 **A** I do. Thank you.

11:17:40 2 **Q** And here, you'll see the bottom e-mail, and it's got
11:17:46 3 marks on it because we went through this with the jury
11:17:48 4 before.

11:17:48 5 **A** Sure.

11:17:50 6 **Q** But to Tasha Polster, who runs this policy setting
11:17:54 7 area.

11:17:57 8 You know who she is? We've talked about her; right?

11:18:00 9 **A** Correct, um-hmm.

11:18:01 10 **Q** I wanted to reach out to you about your thoughts on
11:18:04 11 the Good Faith Dispensing comments. The comment section's
11:18:06 12 getting full for many patients and requiring the deletion of
11:18:09 13 comments, not just Good Faith Dispensing, but other comments
11:18:12 14 as well, especially in the Florida area where the Target
11:18:17 15 Drug Good Faith Dispensing has been going on so long. It's
11:18:21 16 over a year there.

11:18:23 17 Is it okay to give direction around purging of old
11:18:29 18 Good Faith Dispensing comments? I wanted to run this past
11:18:31 19 you before anything was done.

11:18:33 20 Do you see that?

11:18:34 21 **A** I do see it.

11:18:35 22 **Q** And then the answer was, "I think that's probably a
11:18:38 23 good idea. Target Drug Good Faith Dispensing comments are
11:18:43 24 only supposed to be for one script each time. So
11:18:50 25 technically, other than ID info that may be in the comments,

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11:18:53 1 other info could be purged."

11:18:55 2 Do you see that?

11:18:55 3 **A** I do.

11:18:56 4 **Q** Now, that's not the policy that you've been following
11:19:00 5 because -- true?

11:19:04 6 **A** I -- I don't think that that's an accurate statement.

11:19:06 7 **Q** Well, you have been saying to this jury -- and we'll
11:19:10 8 talk about it in a minute under documentation -- but the
11:19:14 9 idea that the comments are only supposed to be for one
11:19:17 10 script each time, you think once you document something, you
11:19:22 11 never need to revisit it; right?

11:19:26 12 **A** That's -- I don't think that's always true. I think
11:19:28 13 that's twisted a little bit.

11:19:31 14 **Q** Well, you certainly have testified that there are
11:19:36 15 times where you do not --

11:19:39 16 **A** Correct.

11:19:41 17 **Q** -- document afresh because you've already documented,
11:19:45 18 right?

11:19:45 19 **A** That's correct, um-hmm.

11:19:46 20 **Q** So were you not aware of this idea that you're
11:19:48 21 supposed to document each time for the prescriptions?

11:19:51 22 **A** I think what they're referring to in this e-mail are
11:19:54 23 Good Faith Dispensing refusals, which is something
11:19:58 24 completely different than a documentation on a prescription
11:20:03 25 or an annotation on a prescription. So I think what you're

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11:20:07 1 seeing here are information about comments, specifically
11:20:13 2 patient comments.

11:20:14 3 So this goes back to what I was telling Kaspar about,
11:20:21 4 you know, not being able to, or not having the occasion to
11:20:24 5 delete important information in the patient comments field.

11:20:28 6 Very rarely does the patient comments field fill up so
11:20:32 7 much so, that you're going to have to delete something out
11:20:35 8 of it.

11:20:36 9 **Q** But, ma'am, what you're missing here is the statement
11:20:41 10 that these comments that you put in are "only supposed to be
11:20:45 11 for one script each time."

11:20:49 12 Do you see that?

11:20:50 13 **A** I do, but I --

11:20:51 14 **Q** And -- are -- hold on. I got to ask a question.

11:20:54 15 Do you see it?

11:20:55 16 **A** Yeah, I see it --

11:20:57 17 **Q** And --

11:20:58 18 **A** I see the --

11:20:59 19 **Q** Here's the question.

11:21:00 20 That was not what you've been doing. You have not
11:21:04 21 been putting comments each script; correct?

11:21:09 22 **A** So --

11:21:10 23 MR. STOFFELMAYR: Objection.

11:21:11 24 THE COURT: Overruled.

11:21:13 25 THE WITNESS: So this series of e-mails that

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11:21:15 1 you're showing me are specifically -- specifically referring
11:21:22 2 to the patient comments field.

11:21:26 3 And so in the patient comments field is where I would
11:21:31 4 place information that I would want another pharmacist to
11:21:35 5 see.

11:21:37 6 So no matter if they're filling a prescription for a
11:21:41 7 diabetes medication or for a controlled substance
11:21:44 8 medication, then they could see this information in the
11:21:47 9 patient comments field. I would never put a
11:21:59 10 prescription-specific comment into this patient comments
11:22:01 11 field unless it was a Good Faith Dispensing refusal.

11:22:07 12 **Q** Well, ma'am --

11:22:08 13 **A** So all of those would go into -- into the annotation
11:22:13 14 on the particular prescription.

11:22:14 15 **Q** Ma'am, when you testified earlier, you said it a
11:22:17 16 little differently.

11:22:19 17 When Mr. Stoffelmayr was asking you this. He said,
11:22:22 18 "If you did everything you needed to do in January to
11:22:28 19 understand the situation and decide you were comfortable
11:22:30 20 filling that prescription because it turns out there were
11:22:34 21 perfectly good reasons for all of that" -- and this is his
11:22:38 22 patient with the drugs he talked about.

11:22:40 23 "If the patient, same patient came back in February,
11:22:44 24 March, April, May, each time the patient came back, would
11:22:48 25 you typically document, 'Oh, back in January, I made some

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11:22:53 1 phone calls and it's okay.'"

11:22:55 2 Your answer was, "I typically don't. I find that once
11:22:59 3 it's documented once or twice, it becomes not necessary to
11:23:04 4 document 100 percent of the time."

11:23:07 5 Do you see that testimony from before?

11:23:09 6 **A** I do.

11:23:15 7 **Q** And what you're doing is really outside of policy,
11:23:18 8 isn't it?

11:23:20 9 MR. STOFFELMAYR: Objection.

11:23:20 10 THE COURT: Overruled.

11:23:23 11 THE WITNESS: So, again, during that testimony
11:23:26 12 that you were just bringing up, what we were referring to
11:23:30 13 were specific comments on specific prescriptions, not these
11:23:34 14 patient comments, which are referred to in these two e-mails
11:23:38 15 that you just handed to me.

11:23:40 16 BY MR. LANIER:

11:23:40 17 **Q** Well, with due respect, you know how vital it is to
11:23:46 18 document at all times in all fields; correct?

11:23:49 19 **A** It's definitely vital to document, but it's not vital
11:23:53 20 to document 100 percent of the time.

11:23:57 21 **Q** Well, you're saying it's not imperative?

11:23:59 22 **A** It's not vital to document 100 percent of the time.

11:24:02 23 **Q** And yet, we know the policy that you say you were
11:24:08 24 taught when you were in school, this is the 2012, that's
11:24:12 25 Exhibit 304, uses that very word.

Stossel - Cross/Lanier

11:24:15 1 It is imperative that pharmacists document all efforts
11:24:20 2 used to validate Good Faith Dispensing.

11:24:26 3 Do you see that language?

11:24:27 4 **A** I do.

11:24:27 5 **Q** Doesn't say it's optional, does it?

11:24:29 6 **A** It says it's imperative. It doesn't say that --

11:24:35 7 **Q** What do you understand -- what do you understand
11:24:38 8 imperative to mean?

11:24:40 9 **A** I understand imperative to mean that it's important
11:24:43 10 that you document.

11:24:44 11 **Q** So, to you, imperative just means important?

11:24:48 12 **A** Correct.

11:24:53 13 **Q** I have not looked it up in the phone -- in the
11:24:55 14 dictionary, but I'm about to and we're going to see if that
11:24:58 15 is -- if maybe I misunderstand the word. Imperative.

11:25:08 16 Imperative. Okay. Hold on. Let's get the focus
11:25:20 17 automatic. Imperative.

11:25:25 18 Well, we're not going to talk about the imperative
11:25:27 19 mood in grammar.

11:25:30 20 "Expressive of a command, entreaty, or exhortation.
11:25:39 21 Not to be avoided or evaded."

11:25:42 22 Do you see that?

11:25:43 23 **A** I do.

11:25:44 24 **Q** If you look at it here, "A command, an order, a rule
11:25:50 25 and guide, an obligatory act or duty."

Stossel - Cross/Lanier

11:25:55 1 Do you see that?

11:25:56 2 **A** I do.

11:25:56 3 **Q** Not an option, right?

11:26:03 4 And yet, you told the jury earlier that this is
11:26:06 5 something you were even taught in school, right?

11:26:20 6 **A** So, I think -- yes, I said something about Good Faith
11:26:23 7 Dispensing being something that I learned in school. I'm
11:26:26 8 not sure what my words were about documenting.

11:26:30 9 **Q** You are to document any information pertaining to the
11:26:33 10 elements of good faith on the prescription hard copy. This
11:26:38 11 is before you had the computer system. This is 2012; right,
11:26:42 12 before you had it in its current incarnation, I should say?

11:26:46 13 **A** That's correct.

11:26:47 14 **Q** Document it on the prescription hard copy and/or
11:26:50 15 annotate the image. I guess that's if you can screen it in,
11:26:54 16 right?

11:26:54 17 **A** Correct.

11:26:54 18 **Q** So, ma'am, it doesn't say do it once on one
11:27:00 19 prescription and then you never need to go back and do it
11:27:03 20 again because you've got that prescription in a box
11:27:05 21 somewhere and could go look it up, does it?

11:27:09 22 **A** That's correct.

11:27:10 23 **Q** It says to do it every time, right?

11:27:14 24 **A** Correct.

11:27:15 25 **Q** So when you fail to do it, you may be thinking, no

Stossel - Cross/Lanier

11:27:21 1 harm, no foul, and maybe many of the times there's not any
11:27:26 2 harm, other than the fact you're not following the rules,
11:27:29 3 right?

11:27:29 4 **A** So I think what's important to know about this policy
11:27:32 5 is that it is a Walgreens policy, but it's certainly not the
11:27:37 6 pharmacy law that I must document this every single time.

11:27:42 7 **Q** Well, you understand there's federal law and there is
11:27:47 8 state law, correct?

11:27:49 9 **A** Correct.

11:27:50 10 **Q** And your licensing is through the State Board of Ohio,
11:27:54 11 correct?

11:27:55 12 **A** Correct.

11:27:55 13 **Q** And you know you have a legal obligation to follow the
11:28:01 14 standard of care, don't you?

11:28:03 15 **A** Correct.

11:28:04 16 **Q** And you're not telling the jury the standard of care
11:28:07 17 is less than the policies, are you?

11:28:12 18 **A** No, of course not.

11:28:13 19 **Q** So the standard of care, which is your legal
11:28:17 20 obligation in Ohio, is to document all efforts used to
11:28:25 21 validate Good Faith Dispensing.

11:28:27 22 True?

11:28:27 23 MR. STOFFELMAYR: Objection, Your Honor.
11:28:28 24 Foundation.

11:28:29 25 THE COURT: Overruled. If she knows. Ask if

Stossel - Cross/Lanier

11:28:33 1 she knows.

11:28:34 2 BY MR. LANIER:

11:28:34 3 **Q** True? That's standard of care, isn't it?

11:28:38 4 **A** Standard of care is me doing everything that I
11:28:41 5 possibly can to make sure that this prescription is
11:28:47 6 legitimate.

11:28:47 7 **Q** Um-hmm.

11:28:47 8 And part of that process is documenting your work,
11:28:51 9 isn't it?

11:28:52 10 **A** Sure.

11:28:53 11 **Q** Thank you.

11:28:55 12 Now, as we look at these DUR alerts, and you showed us
11:29:07 13 one, you had the pictures of how it worked. Remember that?

11:29:11 14 **A** Yes.

11:29:12 15 **Q** The DUR alert that you had and the pictures that you
11:29:18 16 had -- whoa.

11:29:21 17 Your Honor, three suits just walked in?

11:29:24 18 THE COURT: I -- I observed that also but
11:29:27 19 if -- you can continue with this witness.

11:29:29 20 MR. LANIER: Okay. We've got the court
11:29:31 21 officer over here. You watch my back.

11:29:35 22 (Laughter.)

11:29:35 23 BY MR. LANIER:

11:29:35 24 **Q** The DUR alerts, even those have changed over the
11:29:39 25 decades, haven't they?

Stossel - Cross/Lanier

11:29:42 1 **A** I'm sure they have.

11:29:44 2 **Q** Yeah. They've got information in them now that they
11:29:47 3 didn't used to have, right?

11:29:48 4 **A** I'm sure.

11:29:49 5 **Q** All right.

11:29:52 6 Now, still, we can look at those. And based on the
11:29:57 7 way you've talked about them, would you agree with me that
11:30:02 8 you could never accidentally fill the trinity because it's
11:30:06 9 going to show, hey, you're filling a trinity, right?

11:30:10 10 **A** If what you mean by the trinity is. . .

11:30:15 11 **Q** You know the trinity?

11:30:17 12 **A** Opioid -- the --

11:30:18 13 **Q** The opiate with the benzo with the relaxant?

11:30:22 14 **A** With a specific muscle relaxant is considered a
11:30:25 15 trinity.

11:30:26 16 **Q** Um-hmm.

11:30:26 17 **A** Okay.

11:30:27 18 **Q** And you can't ever accidentally fill that. Fair?

11:30:29 19 **A** Sure.

11:30:30 20 **Q** By the same token, you can't accidentally ignore the
11:30:34 21 red flags that would trigger there. If you're ignoring
11:30:36 22 those red flags it's something you're doing knowingly.

11:30:38 23 True?

11:30:39 24 MR. STOFFELMAYR: Objection to form.

11:30:40 25 THE COURT: Overruled.

Stossel - Cross/Lanier

11:30:42 1 THE WITNESS: I'm not sure. Some red flags
11:30:45 2 don't show up as a DUR.

11:30:47 3 BY MR. LANIER:

11:30:47 4 **Q** Correct, but for those that do --

11:30:50 5 **A** Okay.

11:30:50 6 **Q** -- the limited red flags that will show up at a DUR,
11:30:53 7 like you and Mr. Stoffelmayr showed the jury, those limited
11:30:57 8 ones that do show up --

11:30:59 9 **A** Okay.

11:30:59 10 **Q** -- you can't accidentally ignore those. If you ignore
11:31:04 11 them, it's something you've done knowingly.

11:31:06 12 True?

11:31:07 13 **A** Well, you can't ignore them because you can't go past
11:31:10 14 them.

11:31:11 15 **Q** Exactly.

11:31:11 16 So the way the process is set up right now. If you
11:31:15 17 hit resolve or just stick your initials in a note and then
11:31:21 18 hit resolve, it's something you're doing knowingly.

11:31:25 19 Fair?

11:31:26 20 **A** Sure.

11:31:28 21 **Q** And the reason I'm asking this -- one reason I'm
11:31:31 22 asking this is because Dr. Catizone, or Mr. Catizone showed
11:31:36 23 the jury a demonstrative for his opinion that I'll put up
11:31:41 24 here on Walgreens pharmacy notes.

11:31:44 25 Let me pass this out so that people have a fresh copy.

Stossel - Cross/Lanier

11:31:55 1 And Mr. Catizone, if you'll read along with me, he --
11:31:59 2 by the way, he had a chance to look at 2,000 Walgreens
11:32:03 3 prescriptions that spanned a 10-year time period. Okay?

11:32:07 4 You follow me?

11:32:08 5 **A** Sure.

11:32:08 6 **Q** So 200 a year for a period of 10 years, 2,000 in
11:32:13 7 total, and he got to visually look at them.

11:32:15 8 Are you following me?

11:32:16 9 **A** Um-hmm.

11:32:16 10 **Q** He said, "Of the 20,000 prescriptions total, only 160
11:32:23 11 prescriptions contain some writing in the DUR comment field
11:32:30 12 regardless of the DUR alert."

11:32:32 13 Do you see where I'm reading?

11:32:33 14 **A** Sure.

11:32:34 15 **Q** He said, "Some DUR alerts include a pop-up in the
11:32:38 16 Walgreens software. This notifies the pharmacist they need
11:32:42 17 to take an extra look at the prescription."

11:32:44 18 Is that true?

11:32:45 19 **A** Yes.

11:32:46 20 **Q** All right. He got that right.

11:32:48 21 "For the 160 prescriptions that did have a DUR
11:32:56 22 comment, the comments were often just pharmacist initials,
11:33:01 23 notes about reviewing patient history, general patient
11:33:05 24 consult, and speaking to the doctor. These comments fail to
11:33:11 25 identify any of the specific red flags and fail to disclose

Stossel - Cross/Lanier

11:33:15 1 that the red flag was resolved."

11:33:18 2 Do you see that, ma'am?

11:33:19 3 **A** I do.

11:33:20 4 **Q** Don't you think it's important, in the DUR comment
11:33:24 5 field, if there is a DUR red flag that comes up, even though
11:33:29 6 not all of them come up there, I agree -- but if there's a
11:33:33 7 red flag that comes up, don't you think it's important to
11:33:37 8 identify it and resolve it?

11:33:40 9 **A** So I think in the DUR field that you're talking about,
11:33:47 10 if you remember, when we reviewed this DUR screen, you know,
11:33:52 11 there is a pop-up that comes up and it tells you, you know,
11:33:55 12 whether you talked with the prescriber or talked with the
11:33:59 13 patient.

11:33:59 14 You are able to put a little note in there, but you
11:34:03 15 don't necessarily, in working practice, say I found a red
11:34:09 16 flag and this is what the red flag was and this is how I
11:34:12 17 resolved the red flag. It's not common practice to do that.

11:34:18 18 **Q** At Walgreens?

11:34:21 19 **A** It's -- it's --

11:34:22 20 **Q** At your store?

11:34:22 21 **A** It's not common practice do that at my store.

11:34:25 22 **Q** Okay. Okay.

11:34:29 23 Now, while we're finishing up our stop here on bad
11:34:35 24 timing, all of these wonderful changes that your company's
11:34:38 25 put into place over the last several years and going back

Stossel - Cross/Lanier

11:34:44 1 some, those don't have any effect on the overdoses and
11:34:53 2 problems that happened, say, in 2009.

11:34:57 3 Fair?

11:34:59 4 **A** I wouldn't have any of that information.

11:35:02 5 **Q** Ma'am, it's a -- yeah, but this is not a hard one.

11:35:05 6 This -- this one is -- all I'm saying is. . .

11:35:16 7 If, heaven forbid -- no, let's use a real example.

11:35:21 8 When I was 17 years old, I got in a pretty bad car
11:35:28 9 wreck.

11:35:31 10 Are you with me?

11:35:32 11 **A** Okay.

11:35:35 12 **Q** And I was hurt a little bit and the -- my girlfriend
11:35:42 13 was hurt a little bit, too. All right? Are you following
11:35:47 14 me?

11:35:47 15 **A** Okay. Yes.

11:35:48 16 **Q** Now, after that wreck, I took defensive driving.

11:35:56 17 Have you ever taken defensive driving?

11:35:58 18 **A** Okay. No.

11:35:59 19 **Q** I learned all sorts of things. I learned about the
11:36:02 20 three-second rule on following people. I learned about how
11:36:06 21 far down the road you look. I learned when you come to a
11:36:10 22 stop sign, you're supposed to go left, right, left with your
11:36:13 23 head visibly so the cop doesn't give you a ticket.

11:36:17 24 Are you with me?

11:36:18 25 **A** Okay.

Stossel - Cross/Lanier

11:36:19 1 **Q** All of those things I learned, and all the good things
11:36:22 2 I put into practice, including wearing a seat belt, will
11:36:26 3 never change the injuries that Elaine or I got from that
11:36:31 4 wreck; correct?

11:36:33 5 **A** Okay.

11:36:33 6 **Q** Because they're all changes that are happening
11:36:37 7 afterwards, right?

11:36:39 8 **A** Correct.

11:36:40 9 **Q** So all of the policies and all of the good things that
11:36:43 10 you and Mr. Stoffelmayr talk about that work right now in
11:36:46 11 your stores, they don't fix problems that happened a decade
11:36:51 12 ago.

11:36:53 13 You understand?

11:36:53 14 **A** Okay.

11:36:54 15 **Q** Okay. Thank you.

11:36:55 16 I was going to walk through some of the settlement
11:37:07 17 agreements that Walgreens entered into with the government,
11:37:09 18 but my understanding is you don't know anything about those,
11:37:12 19 so I can leave them alone with you.

11:37:14 20 Is that right?

11:37:14 21 **A** Correct.

11:37:15 22 **Q** Okay. Then let's go to the last stop, and the last
11:37:19 23 stop I've called bad results. Okay?

11:37:47 24 You say that you know your doctors and you know your
11:37:51 25 patients. Fair?

Stossel - Cross/Lanier

11:37:52 1 **A** Yes.

11:37:53 2 **Q** So we did count of the different number of patients
11:37:58 3 and the different number of doctors at your store.

11:38:02 4 Which Walgreens store number is yours?

11:38:04 5 **A** 4294.

11:38:06 6 **Q** Did you know that your store uniquely has 29,014
11:38:20 7 different patients? Did you know that?

11:38:27 8 **A** My store's a very busy location.

11:38:29 9 **Q** Um-hmm.

11:38:30 10 And you're not trying to tell us that you know all
11:38:33 11 29,014, are you?

11:38:35 12 MR. STOFFELMAYR: Judge, excuse me.

11:38:37 13 Can we have a sidebar on this? I don't want to be
11:38:40 14 accused of a speaking objection.

11:38:41 15 THE COURT: All right.

11:38:42 16 (Proceedings at sidebar.)

11:38:56 17 MR. STOFFELMAYR: Judge, none of these
11:38:58 18 questions are fair if they don't come with a time frame. To
11:39:01 19 ask her to estimate in her head if she thinks 29,000 is a
11:39:06 20 reasonable number --

11:39:07 21 MR. LANIER: I'll put it in a time frame.

11:39:09 22 THE COURT: That's a good point.

11:39:10 23 MR. LANIER: I'll put it in a time frame.

11:39:11 24 That's fair.

11:39:11 25 THE COURT: Let's focus on a number that, you

Stossel - Cross/Lanier

11:39:13 1 know, they have now, current patients, okay. I mean, you're
11:39:17 2 asking for patients over 25 years. That's meaningless.

11:39:20 3 MR. LANIER: Yeah. I just got it from the
11:39:22 4 dispensing data, Your Honor, which is about a 10-year time
11:39:25 5 span. And I'll make that clear.

11:39:26 6 THE COURT: All right. Make it clear what
11:39:29 7 you're talking about.

11:39:29 8 MR. LANIER: Absolutely.

11:39:29 9 MR. STOFFELMAYR: While we've got you, Judge,
11:39:31 10 can we ask you where we are on time? Some of us think
11:39:35 11 Mr. Lanier has only a few minutes left. Some of us aren't
11:39:38 12 sure.

11:39:38 13 THE COURT: I don't know. I assume he's
11:39:39 14 wrapping up.

11:39:40 15 MR. LANIER: Yes, I'm wrapping up, Judge.
11:39:41 16 We're at the last stop.

11:39:42 17 THE COURT: All right.

11:39:44 18 MR. LANIER: Thank you.

11:39:53 19 (Proceedings resumed in open court.)

11:39:53 20 BY MR. LANIER:

11:39:56 21 **Q** Ma'am, we have the dispensing data for about a decade
11:39:58 22 of your store. And over that time period, we're able to
11:40:02 23 find 29,014 different patients.

11:40:05 24 You're not suggesting you know all of them as well as
11:40:07 25 you were able to tell us the stories that you told us today,

Stossel - Cross/Lanier

11:40:10 1 right?

11:40:11 2 **A** Correct.

11:40:11 3 **Q** And by the same token, if we look at how many doctors
11:40:16 4 your store has filled prescriptions for in that same time
11:40:19 5 period, we've got 7,658 different prescribers.

11:40:26 6 You don't know all of those, do you?

11:40:29 7 **A** That's correct.

11:40:30 8 **Q** All right.

11:40:33 9 And you cited Dr. Keum and showed his prescription to
11:40:40 10 the jury, a filling of Dr. Keum, the rehab doctor.

11:40:46 11 Remember him?

11:40:47 12 **A** Yes.

11:40:49 13 **Q** I'm trying to see, where is the note on here that says
11:40:53 14 the red flags were resolved? Can you show me where that is?

11:41:00 15 **A** I'm not sure it would be on this area.

11:41:05 16 **Q** Well, this is the -- I thought this was the fill sheet
11:41:08 17 for the prescription.

11:41:10 18 **A** This is -- this is not a fill sheet for the
11:41:13 19 prescription. I'm not sure what kind of data sheet this is.
11:41:18 20 This is not -- this is not a Walgreens data sheet.

11:41:21 21 **Q** Well, I thought this is what Mr. Stoffelmayr showed
11:41:24 22 you and you verified was the Walgreens data sheet.

11:41:29 23 Is this something brand new you've never seen before?

11:41:31 24 **A** This was something that I hadn't seen before. This is
11:41:34 25 not a Walgreens data sheet.

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11:41:36 1 Q Hmm. Okay.

11:41:44 2 We've heard a lot about Dr. Franklin from Mr.

11:41:50 3 Stoffelmayr, Peter Franklin.

11:41:52 4 Do you remember him?

11:41:53 5 A I vaguely remember the name of the doctor.

11:41:56 6 Q Have you bothered to see how many prescriptions for

11:42:00 7 Dr. Peter Franklin your store filled?

11:42:05 8 A No.

11:42:11 9 Q And here's where you laughed.

11:42:13 10 "Have you ever been taken to task for not writing
11:42:16 11 enough -- or not dispensing enough opiate prescriptions?"

11:42:20 12 That's where you chuckled, right?

11:42:21 13 A Right.

11:42:22 14 Q So you're not familiar with the reports that were
11:42:25 15 being generated quarterly by your company about which
11:42:31 16 dispensers, which pharmacists were not filling enough opiate
11:42:35 17 prescriptions?

11:42:36 18 A No.

11:42:36 19 Q The jury has heard about Plaintiffs' Exhibit 19607,
11:42:44 20 where Ms. Polster sends an e-mail out that Ed and Jeff
11:42:49 21 developed a report that supervisors will be able to use in
11:42:52 22 order to see pharmacists in their districts that are not
11:42:56 23 dispensing a lot of controlled drugs.

11:43:00 24 The intent is to give them visibility into whether or
11:43:03 25 not we have pharmacists that just won't fill a controlled --

Stossel - Cross/Lanier

11:43:06 1 a controlled med, or maybe are selective about filling them.

11:43:11 2 Do you see where I'm reading?

11:43:12 3 **A** I do.

11:43:13 4 MR. STOFFELMAYR: Judge, I'm going to object
11:43:14 5 to the use of this document.

11:43:15 6 THE COURT: Overruled.

11:43:16 7 BY MR. LANIER:

11:43:17 8 **Q** Ma'am, my question to you is this:

11:43:19 9 You've never been selected as one of those who
11:43:23 10 underfills opiate prescriptions. True?

11:43:26 11 **A** I have no idea.

11:43:28 12 **Q** Okay.

11:43:29 13 MR. LANIER: I'll pass the witness,

11:43:31 14 Your Honor. Thank you.

11:43:32 15 THE COURT: Okay. Well, why don't we see
11:43:38 16 how -- let's see if any of the jurors have any questions.
11:43:41 17 If so, give them to Mr. Pitts and then we'll figure out the
11:43:46 18 timing.

11:43:48 19 (Brief pause in proceedings).

11:44:07 20 THE COURT: There seem to be a bunch.

11:44:13 21 I'm thinking it may make sense to take a lunch break
11:44:16 22 rather than -- there seem to be a fair number. What do
11:44:21 23 you -- what do you think, Mr. Stoffelmayr?

11:44:24 24 MR. STOFFELMAYR: That sounds -- that sounds
11:44:26 25 good. Thank you, Judge.

Stossel - Cross/Lanier

11:44:26 1 THE COURT: All right. Rather than cut up
11:44:28 2 this process, ladies and gentlemen, we will break for lunch.

11:44:32 3 Usual admonitions. Come back at 1:00 o'clock, and
11:44:36 4 we'll conclude with this witness's testimony.

11:44:39 5 (Jury excused from courtroom.)

11:45:11 6 THE COURT: Okay. You may step down for a
11:45:14 7 minute.

11:45:59 8 (Witness excused.)

01:00:52 9 (Recess was taken from 11:45 a.m. till 1:00 p.m.)

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Stossel - Redirect/Stoffelmayr

01:00:52 1 Tuesday Session, November 9, 2021, at 1:00 P.M.

01:00:52 2 COURTROOM DEPUTY: All rise.

01:02:43 3 (Jury returned to courtroom.)

01:02:50 4 THE COURT: Okay. Please be seated, ladies
01:02:52 5 and gentlemen.

01:02:52 6 And, Ms. Stossel, you're still under oath from this
01:02:56 7 morning.

01:02:58 8 And Mr. Stoffelmayr is up. And I'm sure he'll start.
01:03:06 9 Our process has been to allow jurors to ask questions so I'm
01:03:10 10 sure he'll start with those.

01:03:15 11 MR. STOFFELMAYR: May I proceed, Your Honor?

01:03:16 12 THE COURT: Yes, you may.

01:03:16 13 REDIRECT EXAMINATION OF AMY STOSSEL

01:03:18 14 BY MR. STOFFELMAYR:

01:03:18 15 **Q** Hello again. Welcome back from lunch.

01:03:21 16 Welcome back, Ms. Stossel.

01:03:22 17 **A** Thank you.

01:03:22 18 **Q** As the Judge mentioned, it's the practice in his
01:03:26 19 courtroom to allow the jurors to ask questions to the
01:03:29 20 witnesses. So I have a small pile of questions here that
01:03:31 21 I'm going to put up on the screen. So I'm going to -- well,
01:03:40 22 we can read them together and then I'll ask you to answer
01:03:42 23 the question.

01:03:43 24 If there's a question that you just don't know the
01:03:44 25 answer to, of course, you know, don't make it up. Just tell

Stossel - Redirect/Stoffelmayr

01:03:47 1 us you don't know the answer and I may try to follow up on a
01:03:52 2 couple of these.

01:03:53 3 Here's the first one. "In regards to the notes
01:04:00 4 section, you stated you have never had to remove important
01:04:03 5 information. Is there a character limit or not? What
01:04:08 6 unimportant information is removed? Doesn't all information
01:04:13 7 -- isn't it important if it was important enough to enter in
01:04:17 8 the first place?"

01:04:18 9 And I noticed this too. You did say not important
01:04:21 10 information and I wish I had followed up at the time.

01:04:23 11 What unimportant information, and to this juror's
01:04:26 12 question, if someone thought it was important enough to put
01:04:28 13 in there in the first place, how could it be unimportant?

01:04:32 14 **A** Sure. So let me just go through the --

01:04:34 15 **Q** Sure. Take your -- it's part by part if you'd like.

01:04:37 16 **A** Yeah.

01:04:38 17 So in regards to the notes section, you stated you
01:04:41 18 have never had to remove important information. Okay.

01:04:50 19 So that's true. I did state that.

01:04:51 20 It says, "Is there a character limit or not?"

01:04:54 21 There is a character limit. I don't know what that
01:04:56 22 character limit is for that section. I'm not certain what
01:04:59 23 exactly the number of characters is.

01:05:02 24 And it says, "What unimportant information is
01:05:05 25 removed?"

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01:05:06 1 So sometimes in that section, there may be four lines
01:05:13 2 of information, five lines of information that are there.
01:05:27 3 There may be information from four years ago or five years
01:05:29 4 ago that's in that section.

01:05:30 5 If I need to put something in the patient comments for
01:05:34 6 today's date that's relevant with today's information, like
01:05:39 7 a Good Faith Dispensing refusal, that information may be
01:05:45 8 very important for us to note today. And information from
01:05:50 9 five years ago or six years might not be very relevant to
01:05:55 10 that patient's profile in today's time.

01:06:02 11 And so that may be something that does get purged or
01:06:05 12 removed if it's not important.

01:06:07 13 **Q** We've all been thinking a lot about, like,
01:06:10 14 refusal-to-fill type information.

01:06:12 15 Is there information that goes in a patient comment
01:06:15 16 field other than "I refuse to fill for this patient"?

01:06:18 17 **A** Yeah.

01:06:18 18 So there's a lot of other stuff that's not just
01:06:21 19 limited to Good Faith Dispensing in those patient comments.

01:06:26 20 Sometimes a patient might prefer a certain brand of
01:06:32 21 their blood pressure medication. So they may have had a
01:06:36 22 reaction to the Aurobindo manufacturer of their blood
01:06:45 23 pressure medication, and they have to take the Teva
01:06:48 24 manufacturer. And so that might be something that's in
01:06:50 25 there.

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01:06:51 1 When you comb through then the patient profile, you
01:06:55 2 may see that that patient is no longer even on that
01:06:58 3 medication anymore.

01:06:59 4 And so that information might be a comment that would
01:07:03 5 be okay to remove from the patient comment section if that
01:07:09 6 patient is not even using the medication any longer.

01:07:12 7 **Q** Okay. Let's make sure we didn't miss anything.

01:07:14 8 Character limit. What unimportant information.

01:07:16 9 **A** And it says, "Isn't all information important if it
01:07:20 10 was important enough to enter in the first place?"

01:07:21 11 So all information is important for the patient
01:07:25 12 comments, but I think in the context of filling
01:07:29 13 prescriptions every single day, those patient comments are
01:07:34 14 meant to be a place for me as a pharmacist to put specific
01:07:39 15 comments related to the patient and related to filling all
01:07:44 16 of their prescriptions.

01:07:47 17 If there is a comment that needs to go specifically
01:07:52 18 with a certain drug, or a certain prescription, then I'm
01:07:56 19 going to use that little yellow box, that little annotation,
01:08:01 20 and I'm going to put it directly onto the patient's
01:08:04 21 prescription itself so that that becomes a permanent part of
01:08:09 22 that prescription that I can, again, easily go back and
01:08:12 23 view.

01:08:13 24 So this patient comments part is not the be all, end
01:08:18 25 all place for me to place a comment for the patient.

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01:08:23 1 **Q** Have you ever, in your practice, deleted information
01:08:26 2 out of a comment field that you thought was information a
01:08:30 3 future pharmacist would need to exercise their Good Faith
01:08:34 4 Dispensing efforts?

01:08:34 5 **A** No.

01:08:35 6 **Q** All right.

01:08:36 7 Here's another question that I think is similar but I
01:08:38 8 want to make sure we, you know, ask it the different ways.
01:08:42 9 Different jurors have asked the question. And I just had
01:08:44 10 this folded over because the same person had some other
01:08:47 11 questions --

01:08:47 12 **A** Sure.

01:08:47 13 **Q** -- that we'll do one by one.

01:08:49 14 But let's start with what was, I guess, Question 3 on
01:08:53 15 this sheet of paper.

01:08:54 16 "You stated in that in your 25 years, you've never had
01:08:57 17 to remove/delete important comments as running out of space.
01:09:03 18 Key word important. Does that mean you have removed
01:09:05 19 comments due to space but removed comments that perhaps you
01:09:08 20 didn't deem important?"

01:09:09 21 **A** Right.

01:09:09 22 I think that definitely I've removed comments that I
01:09:17 23 didn't deem important. I think the point to make there is
01:09:28 24 that I'm very careful about what I might deem important and
01:09:31 25 what I think other pharmacists may deem important as well.

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01:09:35 1 So I'm not just removing something because, gosh, I
01:09:41 2 think it's no longer important, you know, and another
01:09:44 3 pharmacist shouldn't think this is not important either.
01:09:48 4 I'm only really removing something if, a, there's no other
01:09:54 5 option, and b, if it's absolutely something that I will not
01:10:01 6 need to use again or if it's a comment that someone else
01:10:07 7 will never need to have again.

01:10:10 8 Kind of like the example about the blood pressure
01:10:14 9 medication and the different manufacturer that someone might
01:10:18 10 need. It's not always a Good Faith Dispensing question that
01:10:22 11 are in those comments, and I guess I would say that in my
01:10:28 12 practice, maybe I might have to remove a comment once a
01:10:33 13 year. It's not something that happens very often at all.

01:10:39 14 **Q** All right. Thank you.

01:10:40 15 I'm going to stick with the same -- the same set of
01:10:45 16 questions, and I'll just cover up the ones we're not to yet.

01:10:49 17 Can you read that okay?

01:10:51 18 **A** Sure.

01:10:52 19 **Q** "What happens to a controlled substance that has been
01:10:54 20 filled but not picked up during your shift/not until the
01:10:58 21 following day?"

01:11:00 22 **A** Okay.

01:11:03 23 So once a prescription has been filled, whether it's a
01:11:06 24 controlled substance or not a controlled substance, the same
01:11:09 25 procedure is followed.

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01:11:12 1 After I have completed that product review, after I've
01:11:19 2 checked the product to make sure that it's accurate and the
01:11:24 3 prescription is bagged, then that prescription goes into
01:11:26 4 what we call our prescription bins. And that prescription
01:11:31 5 sits in the prescription bins for up to 10 days until the --
01:11:38 6 or until the prescription is picked up by the patient.

01:11:42 7 So if the patient does not pick up the prescription
01:11:45 8 within 10 days, then that prescription would be what we call
01:11:50 9 "deleted to stored."

01:11:55 10 And so that prescription is deleted out of those bins
01:11:58 11 and put back on the patient's profile.

01:11:59 12 **Q** If -- so if it has to sit there overnight when the --
01:12:03 13 well, not even overnight, but if it just has to sit there
01:12:07 14 for a couple days, is there a risk that somebody could grab
01:12:09 15 it off the shelf and take those controlled substances?

01:12:12 16 **A** I mean, I suppose there's always a risk.

01:12:20 17 **Q** If your 25 years, have you had a problem with bagged
01:12:22 18 prescriptions waiting to be picked up being stolen?

01:12:26 19 **A** No, not in my experience.

01:12:28 20 **Q** If the -- are they -- well, I take it they're behind
01:12:32 21 the counter at the pharmacy. I couldn't walk by and just
01:12:35 22 grab it, could I?

01:12:36 23 **A** No, you could not.

01:12:37 24 There's a definite barrier with the registers so
01:12:43 25 someone can't just walk by. There's a barrier with the

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01:12:46 1 registers and then there's probably about three feet before
01:12:50 2 you can get to our prescription bins.

01:12:53 3 **Q** Are you -- tell me if this is not something you know
01:12:55 4 about, but are there actually Board of Pharmacy rules about
01:12:59 5 the barriers you need to separate where medication is stored
01:13:02 6 from where the public has access?

01:13:05 7 **A** There are some Board of Pharmacy rules with syringes
01:13:12 8 being close to where patients are. I'm not certain about
01:13:16 9 all of the specifics.

01:13:18 10 **Q** When the pharmacy is closed -- so, like your store you
01:13:22 11 said it a 24-hour store. So I could go in at 2:00 a.m. if I
01:13:25 12 needed to by, you know, diapers or beer or whatever I wanted
01:13:28 13 at two o'clock in the morning, but your pharmacy is closed.

01:13:30 14 **A** Um-hmm.

01:13:31 15 **Q** Is it accessible to the public? Could they get in
01:13:34 16 there and rummage around your bagged medication?

01:13:37 17 **A** No, not at all. There's a metal gate that comes down
01:13:43 18 that is -- makes the pharmacy closed. There's also an alarm
01:13:46 19 that we set when we leave the pharmacy at any time.

01:13:51 20 **Q** All right. Moving down.

01:13:58 21 Under the patient comment, e.g., example, GFD refused
01:14:05 22 oxycodone, et cetera, is this noted on the prescription as
01:14:08 23 an annotation as well? Is it required?

01:14:16 24 MR. LANIER: Can you move it up, please?

01:14:17 25 MR. STOFFELMAYR: Oh, I'm sorry. Did I get us

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01:14:19 1 off the screen?

01:14:20 2 THE WITNESS: Okay. So if I'm making a
01:14:27 3 comment about a Good Faith Dispensing refusal, then that
01:14:32 4 means the -- so there's a couple different ways that I can
01:14:36 5 do this. So let me -- see if you can follow. I'll try to
01:14:39 6 explain the best way if it makes sense.

01:14:42 7 There are two different ways that this might happen.
01:14:46 8 So I might get a person bringing in a prescription to me
01:14:52 9 for -- for something. And then based on all of the good
01:14:57 10 faith practices, I might say that I need to refuse the
01:15:01 11 prescription.

01:15:04 12 If I'm refusing this prescription and I put the
01:15:08 13 comment in to my patient comments, you know, GFD refusal for
01:15:15 14 this particular prescription, the date, and my initials,
01:15:19 15 then I would not write anything on that piece of paper. I
01:15:24 16 would hand it back to the person. I would have a
01:15:29 17 conversation with them and say I'm so sorry, I am unable to
01:15:33 18 fill your prescription today. And I would, you know, tell
01:15:35 19 them why I was unable to fill their prescription.

01:15:40 20 That's one way. I would not make a comment or a
01:15:43 21 notation on that prescription before I handed it back to
01:15:46 22 them.

01:15:50 23 That prescription, piece of paper, although I might be
01:15:53 24 uncomfortable filling it, I might not have all of the pieces
01:15:56 25 of the puzzle or the information that I need to fill that

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01:16:00 1 prescription. There might be another piece of the puzzle
01:16:03 2 that I'm missing. Maybe I wasn't able to get ahold of the
01:16:07 3 prescriber to verify something. Maybe there's another
01:16:10 4 pharmacist out there that will be able to get ahold of the
01:16:13 5 prescriber and fill in a piece of that puzzle. Maybe this
01:16:18 6 is a legitimate patient that has a legitimate prescription
01:16:21 7 and a really legitimate issue and they really need this
01:16:25 8 medication and I'm already, you know, putting kind of a
01:16:30 9 barrier between them getting this medication.

01:16:36 10 What if that's the case? And then I'm giving them a
01:16:39 11 really hard time about getting this prescription filled. I
01:16:42 12 want to give that prescription back to them and give them
01:16:44 13 the opportunity to maybe have another pharmacist see. Maybe
01:16:51 14 they have another piece of the puzzle that they need to get
01:16:54 15 this medication. Maybe I just don't have all of the pieces
01:16:56 16 of the puzzle that day.

01:16:57 17 So, in that instance, I would not write anything on
01:17:00 18 the prescription.

01:17:01 19 Second scenario is that a prescription may come to me
01:17:05 20 electronically that I would refuse to fill. And in this
01:17:11 21 case, it's a little more complicated.

01:17:14 22 So when a prescription comes to me electronically, if
01:17:17 23 I'm refusing to fill it, that electronic prescription cannot
01:17:22 24 be taken back by the person and taken to a different
01:17:27 25 pharmacy to fill. The prescriber would have to reissue the

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01:17:32 1 prescription directly to another pharmacy in order for them
01:17:36 2 to get it filled.

01:17:40 3 So in this case, I would make a note directly onto the
01:17:44 4 prescription with that annotation, with that GFD refusal,
01:17:50 5 and then also, again, in that patient comments field with
01:17:53 6 the GFD refusal. And then I would additionally have to go
01:17:59 7 into the patient's profile with this prescription and close
01:18:02 8 out this prescription so that it could not be filled at a
01:18:07 9 Walgreens. But the record would be there.

01:18:14 10 BY MR. STOFFELMAYR:

01:18:14 11 **Q** Any other scenarios we should cover? I just want to
01:18:17 12 make sure we've fully answered the question.

01:18:17 13 So it was, "Is that noted on the prescription as an
01:18:17 14 annotation?"

01:18:17 15 **A** No.

01:18:17 16 **Q** So I think your answer is, "Sometimes, depending on
01:18:20 17 how the prescription came in."

01:18:20 18 **A** Right. Okay, yeah. So it's --

01:18:22 19 **Q** Second question, "Is it required?"

01:18:23 20 **A** So, legally, it's not required.

01:18:28 21 **Q** Is a matter -- is it your practice to do it when
01:18:30 22 there's an image that you can't annotate?

01:18:32 23 **A** When there's an image that I can annotate, yes, then I
01:18:36 24 would put that annotation button.

01:18:39 25 **Q** All right.

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01:18:39 1 Moving down. Three is the one we talked about
01:18:42 2 already.

01:18:43 3 "When it comes to the drug disposal boxes, do they
01:18:47 4 have to be certified in some way to make sure they aren't
01:18:50 5 diverted?"

01:18:51 6 **A** Honestly, I'm not certain about the specifics of that.

01:18:56 7 What I can tell you about the -- these disposal boxes
01:18:59 8 is that there's a specific company that comes to pick those
01:19:02 9 up from us.

01:19:05 10 When the gentleman or -- comes from the company to
01:19:09 11 pick up the drugs that are in the box, I have, in the
01:19:13 12 pharmacy, locked up, in my control to my C-II cabinet where
01:19:20 13 I keep all of my controlled II substances, a set of three
01:19:25 14 keys, and the three keys need to -- I have to have all three
01:19:33 15 keys to open this drug disposal box.

01:19:35 16 So when they come to pick up the drugs that are in
01:19:38 17 that drug disposal box that people have dropped off, I take
01:19:42 18 my keys to my C-II cabinet, I go to the C-II cabinet, I get
01:19:47 19 out the three drug disposal box keys. There are three slots
01:19:53 20 where those keys go, top, middle, and bottom, on that drug
01:19:59 21 disposal kiosk box. And until all of those three keys are
01:20:03 22 inserted, the box will not open.

01:20:05 23 So a pharmacist has to actually go out and open that
01:20:08 24 drug disposal box, along with the gentleman who comes to
01:20:11 25 pick up. We stand there while they take the old box out,

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01:20:16 1 put a new box in, and then sign so that we know that they
01:20:22 2 took those drugs away.

01:20:24 3 **Q** Do you happen to know the company that comes to pick
01:20:27 4 them up and takes them to be incinerated, do they have to
01:20:30 5 have special licenses from the DEA to do that?

01:20:32 6 **A** I'm sure they do. I don't -- I don't know what those
01:20:34 7 regulations are.

01:20:35 8 **Q** And if it's just not something you've encountered,
01:20:38 9 that's fine.

01:20:39 10 **A** No.

01:20:42 11 **Q** Last question from this juror, at least on this piece
01:20:46 12 of paper.

01:20:46 13 "In the fictitious scenario" -- so I think when we
01:20:50 14 were looking at some -- those IntercomPlus scenes that we
01:20:54 15 had mocked up -- "In the fictitious scenario, there were two
01:20:57 16 opioid prescriptions for the same day, 30 days of hydro.
01:21:00 17 Would you not refuse to fill?"

01:21:05 18 I should say maybe this is not straight from the
01:21:09 19 screenshots we were looking at but just in that situation,
01:21:12 20 somebody on the same day --

01:21:14 21 **A** Um-hmm.

01:21:15 22 **Q** -- has two 30-day prescriptions for hydrocodone, say
01:21:19 23 Vicodin or another hydrocodone product.

01:21:22 24 **A** Right.

01:21:23 25 **Q** They say I got 30 days here and I got 30 days here.

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01:21:26 1 **A** Right.

01:21:26 2 **Q** Would you not refuse to fill?

01:21:27 3 **A** So a couple different things about that.

01:21:31 4 Yes, I would refuse to fill at least one out of two of
01:21:36 5 the prescriptions. So, again, I'm taking every single
01:21:40 6 scenario for every single patient on a patient-by-patient
01:21:45 7 basis.

01:21:46 8 So if someone's coming to me and they're presenting
01:21:50 9 two prescriptions for hydrocodone, this can happen in a
01:21:53 10 couple different ways.

01:21:57 11 A lot of times now, patients will go to see their
01:22:00 12 doctor and they might have an appointment with their doctor
01:22:04 13 every three months. And, so, at that doctor's appointment,
01:22:09 14 the doctor may write for them three prescriptions for
01:22:14 15 hydrocodone for 30 days each.

01:22:20 16 And on those prescriptions, they may say -- one
01:22:22 17 prescription may not have a date on it at all as far as you
01:22:26 18 can fill on such and such date. The second prescription may
01:22:29 19 say do not fill until December 1st. The third prescription
01:22:36 20 may say do not fill until January 1st.

01:22:43 21 So there are situations where I may be presented with
01:22:45 22 three prescriptions on the same day for the same medication,
01:22:48 23 but I'm not dispensing all of them on the same day. That's
01:22:52 24 not necessarily a reason for me to refuse to fill all of the
01:22:56 25 prescriptions just because the patient presented them to me

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01:22:59 1 on the same day.

01:23:05 2 Sometimes the patient brings us those prescriptions
01:23:08 3 for future fills, I guess is what I'm trying to say.

01:23:11 4 **Q** But if there was no date restriction on the
01:23:14 5 prescription, someone just said I got 30 days and I got
01:23:17 6 another 30 days, would you fill those right away?

01:23:20 7 **A** I mean, I definitely would not fill both prescriptions
01:23:22 8 at the same time. And the insurance would prohibit me from
01:23:25 9 doing so. My computer system would alert me to DURs and
01:23:30 10 flags.

01:23:31 11 I certainly would not fill a duplicate prescription
01:23:34 12 for any drug, much less, you know, a hydrocodone
01:23:37 13 prescription, but I'm not going to fill a duplicate
01:23:40 14 prescription for a Metformin or a diabetes medication as
01:23:46 15 well.

01:23:46 16 It just -- it's not something I would do.

01:23:51 17 **Q** What about this scenario, and there may actually --
01:23:54 18 this may have been triggered by one of the questions I was
01:23:56 19 reading, or if not, let me just ask you.

01:23:58 20 A patient -- like a patient we looked at, patient, you
01:24:01 21 know, May Test Patient, or whatever her name was on the
01:24:04 22 screen, she had a 5 milligrams of Vicodin prescription,
01:24:09 23 right, or 5/325?

01:24:11 24 **A** Um-hmm.

01:24:12 25 **Q** If she came back -- that was for 30 days, I think,

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01:24:15 1 right?

01:24:15 2 **A** Um-hmm.

01:24:15 3 **Q** If she came back five days later with a prescription
01:24:19 4 for 10 milligrams of Vicodin --

01:24:20 5 **A** Um-hmm.

01:24:21 6 **Q** -- another 30 days for 10 mills Vicodin --

01:24:23 7 **A** Um-hmm.

01:24:24 8 **Q** -- is that something you would just immediately fill,
01:24:27 9 or would you have questions about that?

01:24:29 10 **A** Well, I would have questions about the increase in
01:24:32 11 strength.

01:24:35 12 A lot of times patients will get prescribed one
01:24:39 13 medication in a lower strength and then for whatever reason,
01:24:44 14 maybe that medication is not working for them and they need
01:24:48 15 to take a higher strength of the medication, the doctor will
01:24:51 16 prescribe the higher strength for them instead of telling
01:24:56 17 them, oh, just take two of the lower strength. They'll
01:24:59 18 actually prescribe the higher strength for them. And that
01:25:01 19 would be a time when you could reach out to the doctor's
01:25:03 20 office and ask the doctor, "Hey, what's going on here? I
01:25:08 21 see that the patient just got a prescription for this
01:25:11 22 medication in the 5/325 strength and now you're prescribing
01:25:15 23 the 10/325 strength. What's -- what's going on?"

01:25:19 24 And we might be able to get some resolution from the
01:25:21 25 doctor.

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01:25:24 1 **Q** Okay.

01:25:25 2 I'm going to come back. This is actually the same
01:25:27 3 piece of paper from the very first question but I saw they
01:25:29 4 had another question above that.

01:25:32 5 "Are GFD forms available in the system when a
01:25:34 6 prescription has been refused for the next pharmacist to see
01:25:37 7 why the prescription was refused?"

01:25:43 8 **A** So. . . there's not a. . . there's not a form that's
01:25:53 9 available that would tell me. . . I guess I'm trying to
01:26:00 10 think about how best to answer this.

01:26:05 11 For certain drugs in the computer system, there is a
01:26:11 12 checklist that I can double-check myself to see if I am
01:26:19 13 doing my due diligence on a prescription. There are some
01:26:25 14 ways that I can make notations or put comments if I have a
01:26:33 15 red flag for a prescription and then I am resolving that red
01:26:39 16 flag, there is a spot where I can put those comments about
01:26:43 17 why I'm resolving this red flag.

01:26:48 18 And so the answer to that then would be, yes, another
01:26:51 19 pharmacist could go back and see those comments about why it
01:26:54 20 was refused.

01:26:54 21 **Q** And just so there's no confusion about the time frame
01:26:58 22 we're talking about here, are you describing a Target Drug
01:27:02 23 checklist?

01:27:03 24 **A** Yes. Yes.

01:27:03 25 **Q** And I think the jury has heard this. If not, the you

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01:27:06 1 can confirm it.

01:27:07 2 The Target Drug checklist was previously in paper
01:27:12 3 format --

01:27:12 4 **A** Yes.

01:27:12 5 **Q** -- and was recently transitioned to an electronic
01:27:16 6 format?

01:27:16 7 **A** Correct.

01:27:16 8 That's kind of why I hesitated when I was starting to
01:27:20 9 answer.

01:27:20 10 **Q** Before the Target Drug checklists went electronic,
01:27:26 11 would -- and any information that you wanted to leave for
01:27:29 12 another pharmacist about a refusal, would it have to go in
01:27:33 13 the same patient comment fields we looked at earlier?

01:27:35 14 **A** Yes.

01:27:36 15 **Q** And for non-Target Drugs -- so, hydrocodone for
01:27:39 16 example is not on the Target Drug checklist; correct?

01:27:43 17 **A** Um-hmm.

01:27:43 18 **Q** For a non-Target Drug, today, just like before, if you
01:27:47 19 want to leave a note for the next pharmacist about a
01:27:50 20 refusal, where would you put it?

01:27:51 21 **A** I would put it in the patient comments.

01:27:57 22 **Q** All right. Making our way through these.

01:28:00 23 "For that prescription written for that patient from
01:28:03 24 Dr. Keum, are you the only pharmacist who allows -- who's
01:28:10 25 allowed, excuse me -- to fill for this or can other

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01:28:14 1 pharmacists fill as well"?

01:28:15 2 **A** I'm not the only pharmacist that's allowed to fill for
01:28:17 3 that. It just depends on if it's my shift or not.

01:28:25 4 So it just depends on when the gentleman brings the
01:28:28 5 prescription in and who's on duty at the time.

01:28:31 6 So if I'm working that day, then -- and the person
01:28:36 7 brings the prescription in, then I would fill the
01:28:39 8 prescription. If I'm not working that day and the gentleman
01:28:44 9 brings the prescription in, then the pharmacist who is on
01:28:48 10 duty at the time would be the one who was evaluating and
01:28:52 11 filling the prescription.

01:28:54 12 And so a lot of times for known patients and patients
01:29:01 13 that are coming in month after month, all of the pharmacists
01:29:07 14 who work at my store are seeing this same patient with the
01:29:12 15 same medication coming in month after month. It wouldn't --
01:29:17 16 it would be very odd, it would be very unlikely for me to be
01:29:24 17 the only pharmacist filling one particular patient's
01:29:31 18 medications 100 percent of the time.

01:29:32 19 **Q** We saw on that -- I want to clear this up. That kind
01:29:38 20 of data sheet we were looking at --

01:29:41 21 **A** Oh, okay.

01:29:41 22 **Q** -- for the Dr. Keum patient. You said you weren't
01:29:44 23 sure where that came from.

01:29:45 24 **A** Um-hmm.

01:29:45 25 **Q** So there's no confusion, we put that together. We

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01:29:48 1 pulled it out of a database.

01:29:49 2 **A** Okay.

01:29:50 3 **Q** And it was one of the prescriptions that you filled
01:29:52 4 that Dr. Catizone said I want to see comments and I don't
01:29:54 5 see -- I don't see comments. Doctor or Mr. Catizone, he was
01:29:58 6 an expert who testified some time ago.

01:30:01 7 **A** Okay.

01:30:01 8 **Q** So we said okay, here's a Stossel prescription that
01:30:04 9 Dr. Catizone didn't like, let's pull the data so she can
01:30:06 10 look at it and tell us why she didn't make a comment.

01:30:09 11 **A** Um-hmm.

01:30:09 12 **Q** For that Dr. Keum patient, we saw a consultation note,
01:30:13 13 that there had to be a consultation with the patient.

01:30:16 14 Do you remember that?

01:30:16 15 **A** Yes.

01:30:17 16 **Q** So if you're the one who fills the prescription,
01:30:19 17 you're on duty when the prescription is filled --

01:30:20 18 **A** Um-hmm.

01:30:21 19 **Q** -- you sign off on everything --

01:30:22 20 **A** Right.

01:30:22 21 **Q** -- but the gentleman doesn't come back to pick it
01:30:25 22 up --

01:30:25 23 **A** Right.

01:30:25 24 **Q** -- until later when you're no longer there.

01:30:27 25 **A** Right.

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01:30:27 1 **Q** How does the next shift pharmacist know about the
01:30:31 2 consultation?

01:30:32 3 **A** So that consultation comes up at the register.

01:30:37 4 So when the technician goes to sell the prescription
01:30:42 5 to the patient, there would be something that pops up on the
01:30:48 6 register.

01:30:49 7 So before the prescription could even be scanned to be
01:30:51 8 sold, it would say -- I forget what it says exactly on the
01:30:57 9 register, but it says something like there's a block. It
01:31:00 10 might say like there's a cap block, which is just a -- an
01:31:04 11 abbreviation to say that there's something that the
01:31:07 12 pharmacist needs to address.

01:31:11 13 And so I might -- yes, I might be the pharmacist to
01:31:13 14 fill the prescription, but another pharmacist might be on
01:31:17 15 duty when the gentleman comes to pick up. And so another
01:31:21 16 pharmacist then would be the one to go in and review that
01:31:26 17 dosage and clear that DUR comment, you know, for the final
01:31:32 18 time before the gentleman picks up the prescription.

01:31:34 19 **Q** What about if you're filling a prescription and
01:31:36 20 there's no mandatory consultation that comes out of the
01:31:40 21 system but you think to yourself, I really want to talk to
01:31:43 22 Mrs. Jones?

01:31:43 23 **A** Right.

01:31:43 24 **Q** Because she's a little older and she needs to
01:31:46 25 understand this is going to make her sleepy or whatever.

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01:31:49 1 Is there a way for you to make sure that even if
01:31:51 2 you're not on duty when Mrs. Jones comes in, that the next
01:31:54 3 pharmacist will know that you want the new pharmacist to
01:31:59 4 have a discussion?

01:32:00 5 **A** So I can go in also and manually put one of those --
01:32:06 6 we call them a cap block. So I can manually go in and put
01:32:10 7 one of those cap blocks on a prescription, along with a
01:32:15 8 comment so that when the person is at the register, it will
01:32:19 9 alert the technician to a comment that needs to be addressed
01:32:26 10 with the patient before selling the prescription.

01:32:30 11 And it would be similar to that interaction, like the
01:32:35 12 fentanyl prescription we discussed.

01:32:37 13 **Q** All right. New one.

01:32:40 14 In the mock prescription, there was a patient comment
01:32:43 15 about a different C-II -- and I think what we had in our
01:32:47 16 example, the patient comment popped up and it showed a few
01:32:50 17 years ago there had been a GFD refusal on oxycodone.

01:32:54 18 Do you remember that?

01:32:54 19 **A** Um-hmm.

01:32:55 20 **Q** In the mock prescription, there was a patient comment
01:32:57 21 about a different C-II. Does this cause a red flag? Why?
01:33:01 22 Why not?

01:33:02 23 **A** Sure. It definitely causes a red flag.

01:33:07 24 I think the hardest thing to realize when dispensing
01:33:15 25 prescriptions like this to a patient is that patients'

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01:33:22 1 health histories changes all of the time.

01:33:25 2 What might be happening to you today with your health
01:33:30 3 is not necessarily what was happening to you three months
01:33:35 4 ago or six months ago. Something with your health could
01:33:42 5 change literally at the drop of a dime and you could be in a
01:33:46 6 much different scenario with your health.

01:33:48 7 So there's always -- there's always a red flag that
01:33:52 8 could be raised with a comment from two years ago, or three
01:33:57 9 years ago, but what I'm doing with every single prescription
01:34:01 10 that I come across is I'm going back through that patient
01:34:05 11 history and I'm looking at the information that's before me
01:34:08 12 now and I'm looking at the information that was before me
01:34:14 13 previously. And I'm trying to make the best judgment that I
01:34:19 14 possibly can with all of the information that I have before
01:34:23 15 me right now in real time to benefit this patient that's in
01:34:30 16 front of me to the best of my knowledge.

01:34:35 17 And that's really -- that's really my job every single
01:34:40 18 day.

01:34:45 19 **Q** New question.

01:34:47 20 You stated you found it somewhat superfluous to
01:34:52 21 document every red flag when they populate for a familiar
01:34:56 22 patient.

01:34:57 23 Do you fill in "see prior note written on a, you know,
01:35:00 24 prior date," meaning do you write in the note section that
01:35:03 25 you've already addressed what others might view as a red

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01:35:03 1 flag?

01:35:16 2 **A** I think it comes off that way that I'm just
01:35:21 3 nonchalantly saying, oh, I've -- I've done this before, I
01:35:25 4 don't need to document everything. I don't -- I don't need
01:35:27 5 to do this, forget it. Someone else is already going to
01:35:30 6 know what I did.

01:35:32 7 The truth of the matter is every single prescription
01:35:35 8 that I'm filling, I'm going back through that patient
01:35:39 9 history, I'm looking at the patient history, I'm looking at
01:35:44 10 the prescriptions that I'm filling, I'm looking at their
01:35:49 11 prior comments, their prior documents, their prior notes on
01:35:55 12 prior prescriptions and I'm trying to make the best decision
01:35:58 13 that I can in a relatively short period of time.

01:36:04 14 And so if I have all of that information in front of
01:36:10 15 me every single time for the last 10 times, I. . . I'm
01:36:20 16 trying to do the best by my patient. I'm trying to spend a
01:36:24 17 couple extra minutes talking with them about their health
01:36:30 18 instead of spending five minutes documenting something in
01:36:33 19 the computer system. I really have a very short window of
01:36:39 20 time that that person is in front of me.

01:36:42 21 I know you guys have been to the pharmacy and it's a
01:36:44 22 very short window of time that you have there with the
01:36:47 23 person.

01:36:50 24 Going back to that fentanyl person that I had, I just
01:36:54 25 want to give you a little example. A few months ago, he was

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01:37:01 1 in the store, and I was doing the little consult and that
01:37:03 2 consult pops up every single time for me to review the
01:37:08 3 strength, review everything, and I say to him, how are you
01:37:11 4 doing, how's your pain doing. And he said, "It's really not
01:37:17 5 so great this month. I had one day where my patch, my patch
01:37:23 6 came off."

01:37:24 7 And I was like, "Oh, what do you mean your patch came
01:37:27 8 off?" He was like, "Yeah, my patch fell off and I must have
01:37:29 9 been doing something and I got a little sweaty and the patch
01:37:32 10 came off."

01:37:33 11 And so I walked him through a couple different things
01:37:35 12 that he could do to keep that patch on for a little bit
01:37:38 13 longer, a scenario that he could use, hey, if that patch
01:37:41 14 comes off again, here's what I want you to do. And had I
01:37:46 15 instead just documented that after the DUR field and walked
01:37:52 16 back over to my other computer and started documenting
01:37:55 17 again, oh, talked to him, got it all straightened out, I
01:38:00 18 might have missed that opportunity with him to really touch
01:38:03 19 base with him, find out how he was doing and solve another
01:38:07 20 problem that he had.

01:38:10 21 And so I know it sounds -- I know it sounds like I'm
01:38:14 22 just being a little nonchalant about not documenting
01:38:17 23 everything, but when pressed for time, I'd much rather spend
01:38:21 24 that time with my patient than taking that -- that time to
01:38:28 25 put something else in the computer system that I already

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01:38:31 1 know and that the other pharmacists in my store already
01:38:34 2 know.

01:38:34 3 **Q** So let me ask you a couple follow-up questions on
01:38:37 4 that.

01:38:37 5 You know, obviously you work at a busy pharmacy and,
01:38:42 6 you know, you describe being pressed for time and wanting to
01:38:45 7 use your time with the patients.

01:38:48 8 Have you ever felt that you were so pressed for time
01:38:51 9 that you couldn't do the due diligence you needed to make
01:38:55 10 sure you were filling an appropriate prescription?

01:38:58 11 **A** No, not at all.

01:39:00 12 **Q** These time pressures you're discussing cause you to
01:39:03 13 cut corners?

01:39:03 14 **A** No.

01:39:04 15 I'm not cutting corners with prescriptions. I mean,
01:39:07 16 it might take me a lot longer to get the patient's
01:39:10 17 prescription completed. You might have to wait a little bit
01:39:12 18 longer at the pharmacy, but I'm not -- it's not causing me
01:39:16 19 to work faster.

01:39:18 20 **Q** Have you ever failed to put a note in the system that
01:39:24 21 included information that you felt the next pharmacist
01:39:26 22 needed to be able to see to do their job correctly?

01:39:29 23 **A** No.

01:39:32 24 **Q** Here's one question I've actually had and had
01:39:35 25 forgotten to ask you at some other points.

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01:39:40 1 When you review a script that a technician filled, do
01:39:43 2 you recount the C-IIs or do you just look in the vial?

01:39:46 3 **A** So this doesn't always work a hundred percent of the
01:39:51 4 time. So sometimes yes and sometimes no.

01:39:56 5 Most of the time when the technicians are counting,
01:40:00 6 they're required to do a double count. So the technician
01:40:06 7 will count the C-II prescription one time, and then they
01:40:10 8 will turn around, recount the C-II prescription again.

01:40:16 9 And then what we do at my location is we circle the
01:40:18 10 number on the bottle. So if it's for 30 tablets, they'll
01:40:24 11 count the 30, they'll count the 30 again, and then they'll
01:40:27 12 circle the 30 on the bottle.

01:40:29 13 Now, let's say a prescription gets to me and I'm
01:40:32 14 looking in the vial and I'm verifying everything and I see
01:40:36 15 that it's not circled. Sometimes I'll simply ask the
01:40:40 16 technician, "Hey, did you double count this? Is it double
01:40:44 17 counted?" Sometimes the technician is busy doing something
01:40:47 18 else and I'll just grab a tray, double count it myself. So
01:40:51 19 it can go both ways.

01:40:55 20 **Q** One of the things we saw on that product review screen
01:40:58 21 was actually a picture of the pill where you could see what
01:41:00 22 the stamp was, R312 or whatever, 61.

01:41:05 23 Do you actually pull out a pill to make sure it's the
01:41:07 24 right shape and number stamped on it, or how do you know?

01:41:10 25 **A** So I don't pull it out.

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01:41:11 1 When you open the vial, if you dump a tablet down into
01:41:16 2 the cap of the vial, you can look at it relatively easy. We
01:41:20 3 also have these really big magnifying glasses that are by
01:41:26 4 our stations that have lights on them and you can hold it up
01:41:32 5 underneath there if you have --

01:41:33 6 **Q** But you actually lay eyes on a particular pill --

01:41:37 7 **A** Yes.

01:41:38 8 **Q** -- to make sure it looks like the way it's supposed to
01:41:40 9 look?

01:41:40 10 **A** Yeah, um-hmm.

01:41:41 11 **Q** Okay. All right. I think this refers to an example
01:41:47 12 you gave.

01:41:50 13 If a new pharmacist starts at your store and the
01:41:53 14 little old lady comes by but it's been 19 months since a
01:42:00 15 comment was added, the new pharmacist doesn't know the
01:42:03 16 little old lady and finds that a red flag can't be resolved.
01:42:07 17 The new pharmacist sees the prescription history and notes
01:42:10 18 additional red flags.

01:42:12 19 Would you overrule the new pharmacist and fill because
01:42:15 20 you know the little old lady?

01:42:19 21 **A** So. . . so I think this is like kind of a complicated
01:42:26 22 situation, but at the end of it, I get the question.

01:42:31 23 There's never really two pharmacists working on the
01:42:34 24 same shift in the same store. So if there's a new
01:42:38 25 pharmacist that comes and -- I guess a better way to say it

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01:42:44 1 is what if I'm the new pharmacist, what if I am going into a
01:42:47 2 store that I haven't worked at before and I don't see any
01:42:50 3 comments in this profile and the patient's been getting this
01:42:55 4 medication for a long time.

01:42:58 5 That doesn't mean that I'm just going to automatically
01:43:00 6 fill the prescription just because they've been getting it.
01:43:05 7 Is it complicated because there are no notes that I can see?
01:43:10 8 Maybe. Does it mean I might have to call the doctor's
01:43:13 9 office and get some additional information? Sure. Is it
01:43:20 10 maybe a red flag that she's there and we need to get the
01:43:26 11 prescription filled? Sure.

01:43:29 12 These are things that we're doing every single day
01:43:34 13 with all kinds of prescriptions and resolving red flags and
01:43:37 14 calling on prescriptions and verifying that they are
01:43:42 15 legitimate prescriptions for legitimate medical purposes for
01:43:47 16 legitimate patients and legitimate doctors.

01:43:50 17 **Q** Okay.

01:43:50 18 But if you do have a situation where there's a new
01:43:53 19 pharmacist -- like you said, it's unlikely you're working
01:43:56 20 the same shift but let's say you relieve the new pharmacist,
01:43:59 21 you come in and take over. And the new pharmacist says,
01:44:02 22 "I'm not comfortable filling a prescription."

01:44:04 23 **A** Right.

01:44:05 24 **Q** For whatever reason. It could be, you know, this
01:44:07 25 situation. It could be, you know, the guy seemed high to

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01:44:11 1 me. It could be this doctor, for whatever reason -- can
01:44:16 2 you, as a more senior pharmacist, say, that's your
01:44:20 3 professional judgment, but I'm overruling you?

01:44:23 4 **A** No.

01:44:23 5 **Q** You can't make them fill a prescription they're not
01:44:26 6 comfortable filling?

01:44:27 7 **A** No. No.

01:44:31 8 **Q** Oh, there's a reference here to 19 months. I want to
01:44:37 9 make sure there's no confusion.

01:44:38 10 When we looked at the patient profile screen, it shows
01:44:41 11 19 months -- I'm sorry, 18 months worth of prescriptions for
01:44:44 12 the patients; correct?

01:44:44 13 **A** Um-hmm. Yeah, just about.

01:44:46 14 It's not -- I don't think it's exactly 18 months and
01:44:48 15 then boom, there's nothing, but it's around that time
01:44:52 16 period.

01:44:53 17 **Q** If -- but those patient notes, not the -- not the
01:44:56 18 prescription history?

01:44:57 19 **A** Um-hmm.

01:44:57 20 **Q** But the patient notes, if you were to put something in
01:45:00 21 that field --

01:45:02 22 **A** Oh, they're longer than --

01:45:04 23 **Q** -- do they time out after a particular number of
01:45:06 24 months?

01:45:07 25 **A** No, those are -- those are there until they're removed

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01:45:10 1 or -- yeah.

01:45:14 2 **Q** This is, I think, related to a question we saw
01:45:18 3 earlier, but let's go through it again in case there's a
01:45:21 4 nuance I don't want to miss.

01:45:22 5 If someone has a controlled substance filled but
01:45:24 6 doesn't pick it up before the pharmacy closes, does it sit
01:45:27 7 with the rest of the ready-for-pickup scripts or is it
01:45:31 8 locked back into the C-II cabinet or is it locked in the
01:45:35 9 cabinet?

01:45:35 10 **A** It sits with the rest of the ready prescriptions. It
01:45:38 11 doesn't get locked up in another cabinet. It's just with
01:45:43 12 the rest of the prescriptions in the pharmacy.

01:45:48 13 **Q** I kind of asked you a version of this question before
01:45:50 14 but maybe this is slightly different.

01:45:52 15 In your 25 years, have you had a problem that after
01:45:54 16 you left the pharmacy, a technician or another pharmacist
01:45:57 17 was grabbing C-IIs off the ready-to-fill shelf -- sorry,
01:46:04 18 ready-to-pick-up shelf?

01:46:06 19 **A** No.

01:46:09 20 **Q** Last question, and I'm going to -- I think I'll read
01:46:13 21 the question and then I think I know the document they have
01:46:16 22 in mind. You may as well -- and I'll show it to you.

01:46:19 23 "In regards to the TDGFD" -- so the Target Drug GFD
01:46:24 24 checklist -- "do you find the prompt patient does not appear
01:46:31 25 intoxicated or under the influence of an illicit drug, yes

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01:46:36 1 or no, to be poorly worded?"

01:46:37 2 And, Mr. Pitts, if I could have the computer, I'll
01:46:40 3 pull up a version of the actual document.

01:46:55 4 Boom. All right. You recognize this as at least one
01:46:59 5 of the Target Drug checklist?

01:47:01 6 **A** Yes.

01:47:01 7 **Q** I think the question is about Question 6. You
01:47:03 8 obviously weren't here for it but there was some testimony
01:47:05 9 about whether -- well, about how people interpret this
01:47:11 10 question.

01:47:11 11 "Patient does not appear intoxicated or under the
01:47:13 12 influence of drugs." And you could check yes or no;
01:47:17 13 correct?

01:47:18 14 **A** Right.

01:47:19 15 **Q** Do you find that confusing?

01:47:20 16 **A** Yeah.

01:47:21 17 I mean, it is kind of confusing because it's using
01:47:24 18 kind of like a double negative.

01:47:26 19 **Q** At least double, yeah.

01:47:27 20 **A** To try and get your response.

01:47:28 21 And so I think what this checklist was kind of doing,
01:47:33 22 maybe this might make a little bit more sense about why it
01:47:35 23 was worded that way.

01:47:40 24 In my experience in filling out one of these, you
01:47:44 25 really didn't want to have any of those boxes marked yes.

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01:47:49 1 That would really raise some big questions. So -- but it
01:47:57 2 is -- it is kind of strange because, to me, it would make a
01:48:00 3 lot more sense if it said, you know, patient appears, you
01:48:06 4 know, patient appears intoxicated or under the influence of
01:48:11 5 illicit drugs. You could easily still hit no and --

01:48:16 6 **Q** So I'll ask you -- let me ask you about the yes versus
01:48:19 7 no.

01:48:20 8 **A** Yeah.

01:48:20 9 **Q** What would be the normal answer if you're going to
01:48:22 10 fill -- you know, if this is a regular -- no red flags,
01:48:26 11 everything checks out okay, this is just a regular --
01:48:28 12 someone's got a, you know, tooth procedure and they got
01:48:31 13 oxycodone.

01:48:31 14 Would you expect to check -- forget Number 6. We'll
01:48:34 15 come back to Number 6.

01:48:35 16 **A** Um-hmm.

01:48:36 17 **Q** Would you expect to be checking yes or no?

01:48:39 18 **A** Well, that's where it gets confusing. You would
01:48:42 19 expect to be checking yes, because they don't appear
01:48:46 20 intoxicated, but the whole point of the sheet, I think, was
01:48:51 21 so that you would end up with not a lot of boxes marked yes
01:49:00 22 or no. And so if you ended up with something marked in the
01:49:03 23 other box, it made it very confusing.

01:49:05 24 **Q** So just start with Number 3, patient has received this
01:49:08 25 prescription from Walgreens before. A yes answer would give

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01:49:13 1 you more comfort than a no answer or other way around?

01:49:17 2 MR. WEINBERGER: Objection, Your Honor.

01:49:24 3 THE COURT: Yeah, I -- sustained. I don't
01:49:25 4 understand the question.

01:49:27 5 MR. STOFFELMAYR: That's a good objection,
01:49:28 6 too.

01:49:30 7 THE COURT: Well, I. . .

01:49:33 8 MR. STOFFELMAYR: Your Honor, if you didn't
01:49:34 9 understand it, then I don't want to assume anyone else did.

01:49:37 10 BY MR. STOFFELMAYR:

01:49:38 11 **Q** If you look at Question 3, would you expect for a --
01:49:44 12 well, let me ask it the way I tried to ask it before.

01:49:47 13 Question 3 is, "Patient has received this prescription
01:49:50 14 from Walgreens before?" Would you have more comfort with
01:49:54 15 the answer was yes or if the answer was no?

01:49:56 16 **A** I'd have more comfort if the answer was yes. I'd be
01:50:01 17 able to see that in their patient history.

01:50:08 18 **Q** Third -- Number 5. Third-party insurance is billed.
01:50:15 19 Would you be more comfortable if the answer is yes or if the
01:50:17 20 answer is no?

01:50:20 21 **A** I'd be more comfortable if it was yes.

01:50:22 22 **Q** Why is that?

01:50:26 23 **A** So if the third-party insurance is billed, for most
01:50:35 24 occasions, you know, we're getting people who are using
01:50:38 25 insurance, especially around this same time of the Target

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01:50:41 1 Good Faith Dispensing is around the same time like we were
01:50:47 2 starting to be required by the government to have insurance,
01:50:50 3 to hold insurance. And so most people did have insurance at
01:50:57 4 this time.

01:50:57 5 **Q** So let's then get to Number 6, the one that the
01:51:00 6 juror's question was about.

01:51:01 7 "Patient does not appear to be intoxicated or under
01:51:05 8 the influence of drugs."

01:51:09 9 So what would a yes mean and what would a no mean to
01:51:13 10 you?

01:51:13 11 **A** So -- yeah.

01:51:14 12 So if you're putting yes, then they don't appear
01:51:18 13 intoxicated or under the influence.

01:51:21 14 **Q** So yes is "not intoxicated"; no is not "not
01:51:27 15 intoxicated"?

01:51:27 16 **A** Right.

01:51:28 17 **Q** Okay.

01:51:28 18 So back to the juror's question. Do you find that
01:51:30 19 poorly worded?

01:51:31 20 **A** Yes. Extremely poorly worded.

01:51:34 21 **Q** Okay.

01:51:35 22 **A** And you can see that they were really trying to get us
01:51:37 23 to kind of line up our answers so that any answer out of the
01:51:42 24 norm would kind of stick out to us.

01:51:46 25 The sheet was kind of used as a triple check to

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01:51:51 1 justify your own thoughts.

01:51:53 2 **Q** All right.

01:51:53 3 We're done with the juror questions. Let me ask you
01:51:55 4 some of my own questions and I'll start with the Target Drug
01:51:59 5 checklist.

01:52:02 6 There were -- I think this came out in the
01:52:06 7 cross-examination. This Target Drug checklist came into use
01:52:10 8 in around 2013; is that right?

01:52:14 9 **A** Yeah -- thereabouts, yes.

01:52:16 10 **Q** Well, you haven't been using this exact checklist
01:52:19 11 since you got to the company in 1996?

01:52:21 12 **A** No.

01:52:23 13 **Q** Are there questions on this Target Drug checklist that
01:52:28 14 are different from the questions you would always ask
01:52:32 15 yourself filling any controlled drug prescription?

01:52:36 16 **A** No.

01:52:39 17 **Q** When you fill a -- when you were filling prescriptions
01:52:42 18 for oxycodone in 2010, were you asking yourself different
01:52:45 19 questions than what we see on this checklist?

01:52:47 20 **A** No.

01:52:48 21 **Q** When -- even today, when you fill a prescription for
01:52:51 22 hydrocodone, which is not one of these Target drugs, do you
01:52:54 23 ask yourself different questions than what's on the
01:52:56 24 checklist?

01:52:57 25 **A** No.

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01:53:03 1 **Q** Do you recall, on cross-examination, you were asked
01:53:05 2 some questions about this good faith practices policy from
01:53:09 3 1998?

01:53:11 4 **A** Um-hmm.

01:53:12 5 **Q** And just for the benefit of the record, it's better if
01:53:14 6 you say yes or no.

01:53:15 7 **A** Oh, okay. I'm sorry.

01:53:17 8 **Q** No, it's no problem. No reason you would be
01:53:19 9 responsible for that.

01:53:19 10 Do you -- you remember being asked some questions
01:53:21 11 about this?

01:53:22 12 **A** Yes.

01:53:22 13 **Q** And I think one of the questions was, "Couldn't the
01:53:25 14 company have created this document earlier than 1998."

01:53:30 15 Do you remember questions like that?

01:53:31 16 **A** Yes.

01:53:32 17 **Q** You see it says it was revised in 1998?

01:53:38 18 **A** Yes.

01:53:39 19 **Q** Do you have any recollection one way or the other
01:53:41 20 whether the pre-'98 version looked different in terms of
01:53:45 21 that elements section?

01:53:46 22 **A** I don't know.

01:53:47 23 **Q** You came to the company in '96; correct?

01:53:50 24 **A** Correct.

01:53:58 25 **Q** Very last thing I want to ask you about is -- let me

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01:54:03 1 go back to our screen. Oh, I'm sorry, I was talking to
01:54:12 2 myself. I meant our mocked up Good Faith Dispensing screen.

01:54:23 3 Mr. Lanier asked you some questions about how things
01:54:26 4 are different today at Walgreens than they were, say, in
01:54:32 5 2000 or 2005 or 1998 for that matter.

01:54:35 6 Do you remember those kinds of questions?

01:54:36 7 **A** Yes.

01:54:38 8 **Q** And you may have said this, but the steps that you go
01:54:41 9 through to fill a controlled substance prescription at
01:54:44 10 Walgreens, have they changed these steps we're looking at,
01:54:48 11 since the day you joined the company in 1996?

01:54:51 12 **A** No.

01:54:52 13 **Q** And then if we look at the IntercomPlus system, did
01:54:58 14 intercom -- well, when did IntercomPlus come online?

01:55:01 15 **A** I think 1997.

01:55:04 16 **Q** Shortly after you joined the company?

01:55:06 17 **A** Right. Um-hmm.

01:55:07 18 **Q** Was there a different system before that or was it all
01:55:10 19 paper and typewriters?

01:55:11 20 **A** No, there was a different computer system prior to
01:55:13 21 this.

01:55:13 22 **Q** Do you remember what it was called?

01:55:15 23 **A** I don't remember.

01:55:17 24 **Q** So shortly after you joined the company, IntercomPlus
01:55:20 25 became available in the late '90s?

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01:55:22 1 **A** Yes.

01:55:23 2 **Q** And we looked at some of the functionality in
01:55:26 3 IntercomPlus. Obviously, when you got to the company or --
01:55:31 4 strike that.

01:55:31 5 When you first got access to IntercomPlus in '97 or
01:55:36 6 '98, obviously it didn't have that PDMP link we saw;
01:55:39 7 correct?

01:55:39 8 **A** Correct.

01:55:40 9 **Q** Do you recall when OARRS first came into existence?

01:55:45 10 **A** OARRS has been in existence since prior to 2008.

01:55:51 11 **Q** Was it available in 2000?

01:55:53 12 **A** No.

01:55:57 13 **Q** Some of the functionality we talked about together,
01:56:01 14 like having access to this patient comment function, is that
01:56:09 15 something new in the last few years or has that always been
01:56:12 16 part of IntercomPlus?

01:56:13 17 **A** No, that's always been part of IntercomPlus.

01:56:16 18 **Q** What about leaving prescriber comments or being able
01:56:18 19 to read prescriber comments? Is that something new or has
01:56:21 20 that always been part of IntercomPlus?

01:56:23 21 **A** That's always been part of IntercomPlus.

01:56:25 22 **Q** Same with putting a comment on a -- attaching a
01:56:29 23 comment to a prescription?

01:56:31 24 **A** That's -- yeah, that's been part of IntercomPlus.

01:56:35 25 **Q** I know the -- there's different ways to attach a

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01:56:37 1 comment to a prescription. This cool, sort of sticky note
01:56:41 2 way of doing it, was that in the original version, or was
01:56:44 3 that part of an upgrade?

01:56:45 4 **A** I don't remember. I think part of an upgrade. I
01:56:49 5 don't know if it was originally there.

01:56:50 6 **Q** Back in the old days, were there prescription comments
01:56:53 7 you could leave in one of these fields down here
01:56:55 8 (indicating)?

01:56:57 9 **A** I believe so.

01:57:05 10 MR. STOFFELMAYR: Ms. Stossel, that's all I
01:57:07 11 have for you. Thank you, so, so, much.

01:57:09 12 I will pass the witness, and you and everyone else
01:57:11 13 will get to go home before too long.

01:57:13 14 THE COURT: Okay. I assume there were no
01:57:15 15 questions from Walmart or CVS?

01:57:20 16 MR. MAJORAS: No, Your Honor.

01:57:20 17 MR. DELINSKY: No, Your Honor.

01:57:21 18 THE COURT: Okay. Thank you.

01:57:22 19 Mr. Lanier.

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Stossel - Recross/Lanier

01:57:22 1 RECCROSS-EXAMINATION OF AMY STOSSEL

01:58:24 2 BY MR. LANIER:

01:58:24 3 **Q** All right.

01:58:25 4 Ms. Stossel, I don't think I'll take long with you. I
01:58:27 5 just need to cover a few things that have already been
01:58:30 6 covered just now with you. I want to clarify a couple of
01:58:34 7 things.

01:58:35 8 The first thing I want to do is talk about that Target
01:58:39 9 Drug Good Faith Dispensing checklist. And I've got a copy
01:58:43 10 of it here to put on the overhead.

01:58:50 11 Now, you used to have to fill these out year after
01:58:54 12 year after year for every controlled substance -- well, for
01:58:58 13 three of the controlled substances, right?

01:59:00 14 **A** Correct.

01:59:02 15 **Q** I would think you'd know this pretty good after all
01:59:04 16 those years, wouldn't you?

01:59:06 17 **A** Correct.

01:59:08 18 **Q** But when you were asked about it, one of the jurors
01:59:11 19 asked you about Question Number 6 and whether or not it's
01:59:14 20 poorly worded, and your response was, "In my experience in
01:59:23 21 filling out one of these, you really didn't want to have any
01:59:26 22 of those boxes marked yes. That would raise some -- really
01:59:33 23 raise some big questions."

01:59:34 24 Do you see that?

01:59:35 25 **A** Sure.

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01:59:36 1 **Q** In fact, you're wrong, aren't you?

01:59:41 2 **A** Yeah, that was -- that was incorrect. It's been a
01:59:44 3 couple years since I've looked at this to be frank.

01:59:46 4 **Q** Yeah.

01:59:46 5 Because you want all of them yes and if there's a no,
01:59:51 6 there's a problem; correct?

01:59:52 7 **A** That's correct. Yeah, I realized that after I said
01:59:55 8 it.

01:59:55 9 **Q** Well, when you said -- when you realized it was wrong,
01:59:59 10 you added something else. You said, I think -- the whole
02:00:04 11 point of the sheet I think was that you would end up with
02:00:07 12 not a lot of boxes marked yes or no.

02:00:12 13 Well, that's not the point either. The point is that
02:00:15 14 they're all yes, and if you've got a no, there's a problem;
02:00:18 15 correct?

02:00:20 16 **A** Right. Sure.

02:00:21 17 **Q** And so theoretically, you were supposed to be filling
02:00:24 18 one of these out with just about every controlled substance
02:00:28 19 you did; correct?

02:00:29 20 **A** Well, with three -- with three of the controlled
02:00:37 21 substances.

02:00:37 22 **Q** And when you say it's been a couple of years since
02:00:40 23 I've filled one of these out, is that because it's now
02:00:42 24 electronic?

02:00:43 25 **A** It's electronic, correct.

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02:00:44 1 **Q** So y'all don't use that form anymore?

02:00:46 2 **A** The paper form we do not use anymore.

02:00:48 3 **Q** But you still use it on the computer?

02:00:51 4 **A** Yes, we use it on the computer, but it's in a
02:00:53 5 different format. It's not the same.

02:00:56 6 **Q** But you're still being asked the same questions,
02:01:00 7 aren't you?

02:01:00 8 **A** Some of the questions are exactly the same.

02:01:03 9 **Q** All right. Next issue.

02:01:04 10 A juror asked you this question and I want to press
02:01:07 11 you a little bit on it. Okay?

02:01:09 12 You were asked, "Are GFD, Good Faith Dispensing, forms
02:01:14 13 available in the system when a prescription has been refused
02:01:18 14 for the next pharmacist to see why the prescription was
02:01:21 15 refused?"

02:01:23 16 **A** Um-hmm.

02:01:23 17 **Q** Let's pause for a moment. I thought you told us when
02:01:26 18 you refuse a prescription, generally, you just hand it back
02:01:30 19 to the patient.

02:01:31 20 Is that true?

02:01:32 21 **A** So that's one example.

02:01:34 22 **Q** Isn't that the example you used until this juror asked
02:01:37 23 this question and you came up with a different one?

02:01:41 24 **A** No, that's one example if a prescription is refused.

02:01:45 25 **Q** So if a prescription is refused, it's not company

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02:01:48 1 policy to take a picture, log it into the system, and
02:01:52 2 explain why it's refused? There's no policy on that?

02:01:56 3 **A** There's no policy to log it into the system, take a
02:02:00 4 picture, and explain why it was refused, no.

02:02:05 5 **Q** That might be a good thing to do, don't you think?

02:02:09 6 **A** It's not part of our policy.

02:02:10 7 **Q** I understand that. That wasn't my question. It might
02:02:13 8 be a good thing to do. Work with me here.

02:02:16 9 Let's say you hand the prescription back to that
02:02:18 10 person and they take it to the Walgreens a couple of miles
02:02:21 11 down the road. If you haven't done anything into the
02:02:26 12 system, that next pharmacist doesn't have the benefit of
02:02:30 13 your due diligence, true?

02:02:32 14 **A** But I have done something in the system. I would have
02:02:34 15 put information into the patient comment field.

02:02:37 16 **Q** Did you put a copy of the prescription and say that it
02:02:41 17 was refused to fill and why?

02:02:43 18 **A** I wouldn't have a copy of the prescription if I gave
02:02:46 19 that back to the patient.

02:02:47 20 **Q** That's my point.

02:02:49 21 If you had done so -- if you had a system that allowed
02:02:51 22 you to do so, you could take a scanned copy -- you scan
02:02:56 23 prescriptions all the time into the system; right?

02:02:59 24 **A** Yes.

02:03:00 25 **Q** You could scan a copy of it, mark it refused to fill,

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02:03:04 1 explain why, and it could be in the system for all Walgreens
02:03:08 2 all around the United States of America, couldn't it?

02:03:11 3 **A** I -- I don't -- I don't make any of those system
02:03:17 4 policies at the store level. I don't --

02:03:20 5 **Q** All right.

02:03:21 6 **A** -- have any of that info.

02:03:22 7 **Q** Next subject. Short window of time. You used that
02:03:27 8 expression over and over in one of your examples. Remember?

02:03:30 9 **A** Sure, yes.

02:03:31 10 **Q** And you were saying, "If I've got a choice between
02:03:35 11 documenting or discussing it, it's so much more important I
02:03:38 12 spend my time discussing."

02:03:39 13 Do you remember that example?

02:03:40 14 **A** Yes.

02:03:40 15 **Q** Did it ever occur to you to do both?

02:03:43 16 **A** Of course it occurs to me to do both.

02:03:48 17 **Q** You could have that full-on counseling session and
02:03:51 18 still make the necessary documentary notes in the system.

02:03:55 19 True?

02:03:55 20 **A** I'm sure that I could if I had ample time to do so.

02:03:59 21 **Q** If you had ample time to do so. And who establishes
02:04:03 22 how many people are working in the pharmacy?

02:04:05 23 **A** I do not know that.

02:04:09 24 **Q** Were you aware, back in 2012, that your company had
02:04:16 25 internal concerns that the DEA thought they intentionally

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02:04:21 1 understaffed to prevent their staff from performing Good
02:04:27 2 Faith Dispensing?

02:04:27 3 Were you aware of such concerns?

02:04:29 4 MR. STOFFELMAYR: Objection.

02:04:29 5 THE WITNESS: I -- I am not aware.

02:04:32 6 MR. STOFFELMAYR: Objection, Your Honor.

02:04:33 7 Misstates.

02:04:33 8 THE COURT: Hold it.

02:04:34 9 MR. STOFFELMAYR: Your Honor, that's -- may we
02:04:37 10 go on the headsets?

02:04:38 11 MR. LANIER: It's one question, Your Honor,
02:04:39 12 and I'm glad to do the document.

02:04:41 13 THE COURT: Well, I'll allow one question.

02:04:43 14 You may answer, ma'am.

02:04:44 15 THE WITNESS: I'm not aware of that.

02:04:45 16 MR. LANIER: Okay.

02:04:51 17 BY MR. LANIER:

02:04:51 18 **Q** And as for the document patch -- as for the patch
02:04:56 19 falling off, the fentanyl patch, did you document that in
02:05:01 20 the file?

02:05:03 21 **A** I'm not sure why I would need to document a patch
02:05:06 22 falling off.

02:05:06 23 **Q** Well, ma'am, if I wanted an extra fentanyl patch, one
02:05:09 24 of the easiest ways to think of is to tell you mine fell
02:05:14 25 off.

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02:05:14 1 **A** No one was asking for an extra fentanyl patch, sir.

02:05:17 2 **Q** At that point in time?

02:05:18 3 **A** No one was asking for an extra fentanyl patch.

02:05:20 4 **Q** At that point in time?

02:05:21 5 **A** No. No one was asking for an extra fentanyl patch.

02:05:24 6 **Q** At that point in time.

02:05:26 7 In other words, you don't know what might happen the
02:05:28 8 next day, or the next week, or when the fentanyl patches run
02:05:33 9 out or whatever.

02:05:34 10 Fair?

02:05:34 11 **A** No one was asking for an extra fentanyl patch.

02:05:37 12 **Q** But my point is, don't you think it might be important
02:05:40 13 to enter that as a note in the patient's profile, just in
02:05:45 14 case?

02:05:46 15 **A** No. I'm having a discussion with the patient about
02:05:48 16 how to address something like that.

02:05:50 17 **Q** And then while you were still on this subject, three
02:05:53 18 times you said you were pressed for time. At least that was
02:05:57 19 my count, three times.

02:05:59 20 Why are you pressed for time?

02:06:03 21 **A** My pharmacy is in a very busy location. We see a lot
02:06:06 22 of patients during the day. Pharmacies are busy.

02:06:11 23 **Q** But don't you have enough people working -- you said
02:06:16 24 you never have two pharmacists on shift at the same time.

02:06:23 25 That's not your decision. Right?

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02:06:24 1 **A** Correct.

02:06:26 2 **Q** And then you said but -- when pressed on this point by
02:06:30 3 Walgreens lawyer, you said, "Well, we're not cutting
02:06:33 4 corners," and yet, my challenge to you is, aren't you
02:06:37 5 cutting corners when you're not documenting as it's
02:06:41 6 imperative for you to do?

02:06:44 7 **A** I don't feel that I'm cutting any corners in my job.

02:06:52 8 **Q** And in that regard, Mr. Catizone, he looked -- you
02:06:55 9 know, I told you he looked at 2000 Walmart -- I mean,
02:06:59 10 Walgreens prescriptions.

02:07:00 11 Remember that?

02:07:01 12 **A** Um-hmm.

02:07:01 13 **Q** Over a 10-year time span. I'll represent to you
02:07:04 14 totally random. Nobody cherry picked anything. These are
02:07:09 15 totally random. Okay?

02:07:12 16 So I question, are you surprised about this in light
02:07:16 17 of the time issues you've been talking about, that out of
02:07:20 18 the relevant note fields for Walmart on 2,000 samples --

02:07:24 19 THE COURT: Walgreens. Walgreens.

02:07:25 20 MR. LANIER: Walgreens. Thank you, Judge.
02:07:27 21 I've just -- let me try that again.

02:07:29 22 BY MR. LANIER:

02:07:31 23 **Q** Then within the framework of the timing issue you're
02:07:34 24 talking about, are you surprised that out of a totally
02:07:38 25 random 2,000 sample notes for Walgreens, in the relevant

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02:07:43 1 notes fields, 1,237 were blank across all these comment
02:07:50 2 fields, representing about 61 percent of the sample.

02:07:55 3 Does that surprise you?

02:07:57 4 **A** Not all prescriptions need comments. I'm not
02:08:00 5 surprised.

02:08:00 6 **Q** But these random ones were all selected because they
02:08:04 7 triggered red flags as recognized by the DEA. Within the
02:08:11 8 framework of that?

02:08:13 9 MR. STOFFELMAYR: Objection.

02:08:15 10 THE COURT: Yeah, I'll sustain that.

02:08:17 11 MR. LANIER: All right. Let me do it more
02:08:18 12 carefully.

02:08:19 13 BY MR. LANIER:

02:08:20 14 **Q** These 2,000 were all selected randomly from triggering
02:08:25 15 red flags as understood or set forth by Mr. Catizone, based
02:08:32 16 upon his understanding of the practice of pharmacy and the
02:08:36 17 DEA rules and the Boards of Pharmacy rules.

02:08:40 18 Do you follow?

02:08:41 19 **A** Sure.

02:08:41 20 **Q** So these are ones -- these pharmacy notes are of
02:08:45 21 prescriptions that triggered those red flags. And yet,
02:08:49 22 61 percent of the sample are blank across all these comment
02:08:54 23 fields.

02:09:02 24 Does that surprise you?

02:09:05 25 **A** Not all prescriptions with red flags need comments.

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02:09:17 1 **Q** All right. On -- next subject.

02:09:19 2 Changing the comments, deleting comments. Would you
02:09:25 3 agree with me that people's -- I think you even said it,
02:09:28 4 people's health history changes all the time and you're
02:09:32 5 always wanting to look at the prescription history with all
02:09:35 6 the information you have.

02:09:36 7 That's what you said. Right?

02:09:38 8 **A** Correct.

02:09:39 9 **Q** And that's why it's probably a good idea to have all
02:09:42 10 of the data and not delete the old. Wouldn't you agree?

02:09:47 11 **A** Correct.

02:09:48 12 **Q** I'm sorry?

02:09:48 13 **A** That's correct.

02:09:50 14 **Q** Okay.

02:09:52 15 So even in the example you gave of deleting the old
02:09:55 16 because the lady changed medicines or something, you never
02:10:00 17 know if she might go back to the old medicine. Might be
02:10:04 18 helpful to have the note there of an allergic problem.

02:10:09 19 True?

02:10:09 20 **A** Yes.

02:10:10 21 **Q** Thank you.

02:10:11 22 MR. LANIER: I hope you have a great day. And
02:10:13 23 I appreciate it, Your Honor. I'm through.

02:10:14 24 Ladies and gentlemen, thank you all for the chance to
02:10:16 25 present evidence.

02:10:19 1 THE COURT: Okay.

02:10:20 2 Ms. Stossel, thank you very much. You may be excused.

02:10:23 3 (Witness excused.)

02:10:35 4 THE COURT: Okay. Is it -- my understanding
02:10:38 5 that subject to exhibits, the defendants are resting?

02:10:41 6 MR. STOFFELMAYR: That's correct, Your Honor.

02:10:42 7 MR. MAJORAS: Yes, Your Honor.

02:10:43 8 MR. DELINSKY: Yes, Your Honor.

02:10:43 9 THE COURT: Thank you.

02:10:44 10 And am I correct that plaintiffs have no rebuttal?

02:10:51 11 MR. WEINBERGER: Your Honor, the jurors can't
02:10:52 12 hear.

02:10:52 13 THE COURT: All right. So all the defendants
02:10:54 14 are resting?

02:10:54 15 So am I correct that the plaintiffs have no rebuttal?

02:10:58 16 MR. LANIER: We have no rebuttal, Your Honor,
02:11:00 17 you are correct.

02:11:00 18 THE COURT: Okay. All right.

02:11:03 19 Then, ladies and gentlemen, the testimony in this case
02:11:06 20 has come to an end. I had told you last Friday we would end
02:11:10 21 sometime middle of the week.

02:11:16 22 So to permit counsel to prepare for closing arguments
02:11:20 23 and because we're going to be off anyway on Thursday, we are
02:11:23 24 going to recess for the week. We're going to resume
02:11:26 25 promptly at nine o'clock a.m. this coming Monday morning,

02:11:29 1 November the 15th, for final arguments and instructions.

02:11:34 2 And at the close of the day, Monday, the case will be
02:11:37 3 submitted to you for deliberations.

02:11:39 4 It is very important that over the next, I guess
02:11:44 5 five days, you not read, listen, encounter anything whatever
02:11:51 6 having to do with this case or anything related to the
02:11:53 7 subject matter of this case in any sort of media, that you
02:11:57 8 not conduct any sort of independent research. Everything
02:12:02 9 that you need to know to make your decision, you've heard
02:12:04 10 over the last six weeks in this courtroom and you'll hear in
02:12:07 11 the closing arguments and my instructions on Monday.

02:12:09 12 You are not to discuss this case with anyone. The
02:12:12 13 only one you can talk about is your fellow jurors and you
02:12:14 14 won't be meeting.

02:12:17 15 So anyone who asks you any questions, tell them this
02:12:20 16 Judge has ordered me not to talk about the case until it's
02:12:22 17 over and that should end it.

02:12:27 18 One thing I'd like you to consider before we leave.
02:12:33 19 My colleague, Judge James Gwin, who's on the side of this
02:12:38 20 hallway, has graciously offered my -- his courtroom for you
02:12:43 21 to use during your deliberations if you prefer. I mean,
02:12:48 22 obviously the jury room is pretty cramped and because of
02:12:51 23 COVID, there's a large group of you.

02:12:54 24 If you would prefer that, that's fine. I mean, is
02:13:00 25 there a consensus that you prefer that? Fine. Then we will

02:13:07 1 have that set up during the day on Monday.

02:13:09 2 I was -- I was hoping that would be possible but it
02:13:12 3 looked like he had a trial. That trial's not going forward.
02:13:14 4 He just contacted me. So I will take him up on that offer,
02:13:19 5 and it will be easier and safer. I had hoped that would be
02:13:21 6 the case, but we have a lot of trials going on in this
02:13:27 7 courthouse.

02:13:29 8 So, all right. Have a very good next few days.
02:13:33 9 Celebrate Veteran's Day. It's important to honor all those
02:13:37 10 brave men and woman who are serving our country now and have
02:13:39 11 done so in the past.

02:13:40 12 Some of us -- some of them are still with us. Some
02:13:43 13 we've lost because of that service.

02:13:46 14 Have a good few days. Come back refreshed, and I'll
02:13:49 15 see you on Monday.

02:13:51 16 (Jury excused from courtroom at 2:13 p.m.)

02:14:24 17 THE COURT: Okay.

02:14:25 18 If someone could close the backdoor, we'll take up a
02:14:28 19 few things before we break. Okay.

02:14:35 20 I guess the first thing to take up is any exhibits
02:14:38 21 with our last witness?

02:14:42 22 MR. STOFFELMAYR: We have two, Your Honor.
02:14:43 23 Obviously, we have not yet sent the e-mail.

02:14:48 24 THE COURT: All right.

02:14:48 25 MR. STOFFELMAYR: It's the only two documents

02:14:50 1 we used with her.

02:14:50 2 THE COURT: Okay. Let's. . .

02:14:59 3 MR. STOFFELMAYR: It is -- they are

02:15:08 4 WAG-MDL-06 -- no, I'm sorry. Let me start over.

02:15:12 5 WAG-MDL-02629 and WAG-MDL-02630.

02:15:17 6 Do you need copies, Your Honor?

02:15:20 7 THE COURT: Well, there -- are there any
02:15:22 8 objections?

02:15:23 9 MR. WEINBERGER: Yes. We object.

02:15:26 10 THE COURT: Well, let me see the documents
02:15:29 11 then.

02:15:30 12 MR. WEINBERGER: These are the two printouts
02:15:32 13 from the Ohio -- State of Ohio licensure.

02:15:49 14 MR. STOFFELMAYR: She recognized these
02:15:50 15 documents. She explained what they were. She was examined
02:15:52 16 on them. She was available for cross-examination on them.

02:15:55 17 I don't know what the objection would be.

02:15:57 18 MR. WEINBERGER: They're hearsay.

02:16:01 19 MR. STOFFELMAYR: Well, they're public
02:16:02 20 records.

02:16:03 21 MR. WEINBERGER: There's no indication that is
02:16:05 22 a public record.

02:16:05 23 THE COURT: I don't even know what --

02:16:06 24 MR. STOFFELMAYR: I think it's clear on its
02:16:08 25 face. Just to say that, I mean, we're not going to bring a

02:16:10 1 witness from the Ohio Department of Professional Licensure.

02:16:15 2 MR. WEINBERGER: I mean, if you're not letting
02:16:18 3 OARRS reports in, I don't see why this comes in.

02:16:21 4 THE COURT: Well, I'm trying to remember what
02:16:23 5 she -- they're harmless.

02:16:31 6 It just shows that Dr. Demangone has a license. There
02:16:35 7 was no dispute that he has a license. So they can come in
02:16:37 8 over objection.

02:16:38 9 MR. STOFFELMAYR: Thank you, Judge.

02:16:41 10 THE COURT: Any documents the plaintiffs want
02:16:44 11 to introduce?

02:16:56 12 MR. WEINBERGER: Your Honor, this document --
02:16:59 13 these two documents, if I just can go back to them for a
02:17:03 14 second.

02:17:03 15 They were used for purposes of also apparently
02:17:07 16 demonstrating that he hadn't had any prior Board actions.
02:17:13 17 So, you know, it's not just that he has a license presently.

02:17:17 18 THE COURT: Well, he doesn't have any --
02:17:19 19 apparently he doesn't have any prior Board actions.

02:17:22 20 MR. WEINBERGER: Well, that's her
02:17:23 21 interpretation of a government document. There's no
02:17:25 22 indication that she ever used -- she may have looked it up
02:17:29 23 online.

02:17:29 24 THE COURT: All right.

02:17:30 25 MR. WEINBERGER: But there's no indication

02:17:32 1 that she's had any experience with respect to this
02:17:34 2 particular document.

02:17:34 3 THE COURT: Well, she was willing to interpret
02:17:37 4 it and opine on it, Mr. Weinberger. Whether she had the
02:17:40 5 ability or not, she did. So I'll admit them over objection.

02:17:45 6 Do the plaintiffs have anything they offer -- they
02:17:48 7 want to offer with Ms. Stessel?

02:17:52 8 MR. STOFFELMAYR: Stossel.

02:17:53 9 THE COURT: Stossel. Sorry.

02:17:55 10 MS. FLEMING: Maria Fleming for the
02:17:57 11 plaintiffs.

02:17:57 12 Yes, Your Honor. We were offering P20801.

02:18:02 13 MR. STOFFELMAYR: Do you have a copy handy?
02:18:04 14 We've probably got one in a pile somewhere.

02:18:08 15 MS. FLEMING: We gave it out earlier.

02:18:10 16 MR. STOFFELMAYR: I'm sure you did. It's just
02:18:11 17 in the middle of a pile now.

02:18:12 18 I got it right here. Thank you.

02:18:26 19 The witness had no knowledge of this particular
02:18:28 20 document.

02:18:29 21 THE COURT: What is it?

02:18:30 22 MR. STOFFELMAYR: It's an e-mail exchange
02:18:31 23 about --

02:18:32 24 THE COURT: Let me see it, please.

02:18:57 25 (Brief pause in proceedings.)

02:19:07 1 MR. STOFFELMAYR: This is one of these -- did
02:19:09 2 I read that correctly?

02:19:09 3 THE COURT: Yeah, I agree. The witness knew
02:19:12 4 nothing about this, wasn't even sure it was right.

02:19:16 5 MR. WEINBERGER: Well, this -- I mean, this is
02:19:18 6 a -- this is a Walgreens document.

02:19:19 7 THE COURT: Well, there's no question about
02:19:22 8 authenticity, but the witness knew nothing about it, had
02:19:24 9 never seen it. I don't even think she knew if it was
02:19:28 10 accurate. And she described it as just an e-mail, not a
02:19:33 11 policy. That's the point. She said it's an e-mail.

02:19:36 12 MR. WEINBERGER: Well, that may be her
02:19:38 13 interpretation of it, but, I mean, to me, it's no different
02:19:41 14 than -- I mean, frankly, it's even more probative than the
02:19:47 15 exhibits that you've admitted in from the Ohio Licensure.

02:19:50 16 THE COURT: Well --

02:19:51 17 MR. WEINBERGER: I mean, it's a Walgreens
02:19:53 18 document. She was asked about it.

02:19:55 19 THE COURT: All right.

02:19:56 20 Well, I'm not admitting it because the witness knew
02:19:59 21 nothing about it, and she didn't even acknowledge it as a
02:20:04 22 policy. She had never seen it. Knew nothing about it.

02:20:07 23 So. . . all right.

02:20:13 24 Anything else the plaintiffs wanted to admit with her?

02:20:16 25 MR. LANIER: No, Your Honor.

02:20:16 1 THE COURT: Okay. All right.

02:20:19 2 So when we break, I'll -- I want -- excuse me --
02:20:23 3 counsel to stay with Mr. Pitts and Julian to make sure that
02:20:31 4 everything is set with the exhibits, that everything that's
02:20:34 5 been redacted has been redacted so the jury will have
02:20:38 6 everything accurate.

02:20:38 7 If you don't finish today, hopefully you can, but if
02:20:42 8 not, we'll finish up tomorrow morning with that.

02:20:45 9 MR. HYNES: Your Honor?

02:20:45 10 THE COURT: Yes?

02:20:46 11 MR. HYNES: Paul Hynes for CVS.

02:20:47 12 The parties have been consulting, and we're exchanging
02:20:50 13 lists of the exhibits that we all believe have been admitted
02:20:53 14 and we're working through that and we think it might be
02:20:55 15 better to work the issues out ourselves and then come to Mr.
02:20:58 16 Pitts and the Court with whatever issues may remain.

02:21:00 17 But we're working together to try to get a final set
02:21:04 18 that we're agreed on so we don't have to burden the Court
02:21:08 19 with --

02:21:08 20 THE COURT: Well, our --

02:21:11 21 MR. HYNES: If that's okay with you, of
02:21:13 22 course.

02:21:13 23 THE COURT: That's okay, but I mean, who --
02:21:15 24 it's -- all right. Then maybe we should just appear
02:21:19 25 tomorrow morning and confirm that. And if there are any

02:21:24 1 issues, I'll deal with them. That will give you the rest of
02:21:32 2 the day and this evening.

02:21:33 3 So why don't we do it at nine o'clock tomorrow morning
02:21:37 4 and -- all right. So I want the court reporter and everyone
02:21:42 5 tomorrow morning.

02:21:42 6 MS. FITZPATRICK: Your Honor, Laura
02:21:43 7 Fitzpatrick with the plaintiffs.

02:21:45 8 We agree. We think that's a very good idea. We've
02:21:48 9 been successful in working out issues in the past. So we
02:21:51 10 wanted to take one more shot at minimizing the list of
02:21:54 11 issues to bring to you and to the Court.

02:21:56 12 THE COURT: Well, I hope -- I mean, there
02:21:58 13 really shouldn't be any because we've done it, but if you
02:22:00 14 can't agree and there's some issue, I'll -- we'll take it up
02:22:03 15 at 9:00 a.m. tomorrow.

02:22:05 16 MS. FITZPATRICK: Thank you, Your Honor.

02:22:05 17 MS. FUMERTON: Your Honor, this is
02:22:08 18 Tara Fumerton for Walmart.

02:22:09 19 I think there are two issues we're going to be at an
02:22:12 20 impasse on a redaction with plaintiffs that perhaps we could
02:22:15 21 just take up now if that's okay, or we can do it tomorrow
02:22:18 22 morning.

02:22:18 23 THE COURT: Well, I don't know why you're
02:22:20 24 at an -- I thought we had agreed, but what are they and
02:22:23 25 I'll. . .

02:22:25 1 MS. FUMERTON: Yeah.

02:22:25 2 So, Your Honor --

02:22:27 3 THE COURT: Let me see the document and what
02:22:29 4 the problem is.

02:22:39 5 MS. FUMERTON: So, Your Honor, I guess one we
02:22:41 6 can do in the abstract and the other one you're going to
02:22:43 7 need to see.

02:22:44 8 So one of them is the Settlement Agreement for
02:22:46 9 Walmart. I think we were to redact the settlement amount,
02:22:49 10 but we also are requesting that the fact that a dollar
02:22:52 11 amount was paid at all be redacted, and I think there was
02:22:56 12 some commentary by Your Honor previously to that effect.

02:23:01 13 So we would request that the entire paragraph
02:23:03 14 suggesting or the entire statement saying that there was any
02:23:06 15 payment made at all be redacted.

02:23:09 16 MS. FITZPATRICK: Your Honor, Laura
02:23:10 17 Fitzpatrick for the plaintiffs.

02:23:11 18 Our position is that we have fully complied with
02:23:14 19 Your Honor's guidance here and have redacted any reference
02:23:17 20 to settlement amounts.

02:23:18 21 The idea that plaintiffs would be prohibited from
02:23:22 22 providing -- from having in evidence the paragraph that
02:23:28 23 references the fact that Walmart and other defendants, in
02:23:32 24 fact, paid penalties would be prejudicial to us,
02:23:37 25 particularly because plaintiffs have allowed, for example,

02:23:40 1 even though defense counsel did not go over this paragraph
02:23:45 2 in front of the jury, we've allowed the paragraphs that
02:23:47 3 state that Walmart disputes -- you know, there's no
02:23:52 4 admission of liability.

02:23:52 5 And so from our position, if that sort of a thing is
02:23:55 6 allowed back in evidence, the fact that Walmart, in fact,
02:23:57 7 did pay some sort of monetary fine should be allowed. But
02:24:01 8 we are in no way trying to put forth the amount of the fine
02:24:04 9 paid, the size of the fine, anything like that.

02:24:07 10 THE COURT: Well, let me see the paragraph. I
02:24:09 11 mean, we haven't --

02:24:11 12 MS. FITZPATRICK: Yes, Your Honor.

02:24:11 13 THE COURT: We haven't discussed this. I
02:24:13 14 don't think any witness was asked about it.

02:24:18 15 MS. FUMERTON: That's correct, Your Honor.
02:24:19 16 That's also part of it is that we don't want there to be any
02:24:22 17 sort of suggestion or wonder what that is from the jurors.

02:24:24 18 Also, it's not relevant. I mean, the purpose of these
02:24:27 19 settlements was to --

02:24:29 20 THE COURT: Well, it may be relevant that an
02:24:31 21 amount of money was paid. Okay?

02:24:32 22 MS. FITZPATRICK: Yes, Your Honor.

02:24:33 23 And Mr. Lanier elicited several times from several
02:24:36 24 different witnesses that fines were paid by these companies,
02:24:40 25 and if we need to pull the testimony, we can. I have a copy

02:24:43 1 if you'd like, Your Honor.

02:24:45 2 MS. FUMERTON: In certain instances, though,
02:24:46 3 you sustained objections to that as well, saying that the
02:24:48 4 fact that a fine was paid would be prejudicial or confusing.

02:24:56 5 MR. SWANSON: Your Honor, Brian Swanson for
02:24:58 6 Walgreens.

02:24:58 7 Just so there's no confusion, we have agreement from
02:25:00 8 the plaintiffs that for the settlement agreements relating
02:25:03 9 to Walgreens, the entire paragraph has been redacted and
02:25:05 10 that's reflected on the docket.

02:25:07 11 MS. FITZPATRICK: And that -- and Mr. Swanson
02:25:09 12 is correct and because of the nature of those particular
02:25:11 13 settlement agreements, we were able to make that agreement.

02:25:13 14 THE COURT: Well, I -- we've got --

02:25:14 15 MR. SWANSON: I just wanted to make sure that
02:25:16 16 it wasn't --

02:25:17 17 THE COURT: We've got to be consistent.

02:25:18 18 I don't think it's proper to have similar provisions
02:25:23 19 redacted with certain of the defendants and not for others.
02:25:26 20 I don't understand --

02:25:28 21 MS. FITZPATRICK: Your Honor, that's fine.

02:25:29 22 Plaintiffs would then ask at this time as well for the
02:25:34 23 paragraph that deals with where these companies state that
02:25:36 24 this is not an admission of liability, that those portions
02:25:39 25 be redacted as well since counsel did not go over those

02:25:42 1 portions.

02:25:42 2 And in fairness, if we have to redact that a fine was
02:25:45 3 paid, we think that we're entitled to redact the portion
02:25:48 4 that states it's not an admission of liability.

02:25:51 5 MS. FUMERTON:

02:25:51 6 Well, we disagree entirely but also it's just not a
02:25:54 7 factually true statement of the witness, Brad Nelson, who
02:25:57 8 was asked about the settlement, specifically stated over and
02:25:58 9 over again that there was no admission.

02:26:00 10 So I don't see what the point is.

02:26:02 11 THE COURT: Yeah. It also says nor is it a
02:26:04 12 concession by the United States that its claims are not
02:26:05 13 well-founded.

02:26:06 14 So the point is, I'm going to leave that in because
02:26:11 15 it's accurate. No one -- no one -- there's no judicial
02:26:14 16 finding, and it's not an admission.

02:26:16 17 There were certain agreements where there were
02:26:18 18 admissions, and we allowed those admissions to be read
02:26:21 19 because they were admissions.

02:26:24 20 So I think it would be -- to omit this might -- might
02:26:29 21 be confusing and inaccurate. So -- all right. So we'll
02:26:33 22 delete -- we'll delete a paragraph that talks about paying
02:26:39 23 money.

02:26:40 24 MS. FUMERTON: Thank you, Your Honor.

02:26:41 25 There was one other one. Ms. Fitzpatrick, it's the

02:26:44 1 one, Ms. Hiland's e-mail.

02:26:47 2 You have -- I have the relevant portion of the
02:26:48 3 transcript. I can hand that up to you.

02:26:50 4 MS. FITZPATRICK: Tara, just for the record,
02:26:53 5 P157257. Is that what you're referencing?

02:27:05 6 MS. FUMERTON: Yes.

02:27:09 7 This is an e-mail where Ms. Hiland was questioned
02:27:12 8 about the first page and the first line of the second page.
02:27:15 9 And then there's a whole bunch of other information on it.

02:27:18 10 You agreed that the information on the second and
02:27:20 11 third pages was confusing and had never been discussed.

02:27:25 12 Ms. Fitzpatrick, I believe, represented that then
02:27:28 13 we'll try to work that out. We think the entirety of it
02:27:30 14 should be redacted. They think none of it should -- well,
02:27:33 15 only some of it.

02:27:34 16 MS. FITZPATRICK: That's not correct.

02:27:35 17 MS. FUMERTON: But we want the entire thing to
02:27:37 18 be redacted.

02:27:38 19 MS. FITZPATRICK: Your Honor, I
02:27:39 20 specifically --

02:27:39 21 THE COURT: Can I see the document and what
02:27:41 22 the issue is, please?

02:27:51 23 MS. FITZPATRICK: Your Honor, I will hand up
02:27:53 24 this portion of the document but just to reference it.

02:27:58 25 On the second page, I checked the transcript and, in

02:28:01 1 fact, Mr. Lanier did question --

02:28:03 2 THE COURT: Can I just see this document? I
02:28:05 3 don't know what we're talking about.

02:28:06 4 MS. FITZPATRICK: Yes, Your Honor.

02:28:07 5 MS. FUMERTON: And, Your Honor, you'll see --
02:28:14 6 Your Honor, I have also handed up the relevant portion of
02:28:18 7 the transcript where this was discussed, as well your
02:28:21 8 comments on it.

02:28:21 9 But our proposal is essentially the first one where
02:28:23 10 everything would be redacted after the first line on the
02:28:25 11 second page.

02:28:27 12 I believe plaintiffs want most of the information on
02:28:31 13 the second and third page to be left unredacted, even though
02:28:34 14 none of it was discussed with Ms. Hiland.

02:28:36 15 MS. FITZPATRICK: And that's not correct,
02:28:38 16 Your Honor. Plaintiffs --

02:28:39 17 THE COURT: I don't even know -- I don't know
02:28:40 18 what this document is or what the --

02:28:42 19 MS. FITZPATRICK: Your Honor, this is a
02:28:45 20 document that Mr. Lanier questioned the witness about. It's
02:28:47 21 a Walmart company document. I believe Ms. Hiland is on the
02:28:50 22 document.

02:28:50 23 THE COURT: Okay. Let me read this. I
02:28:52 24 can't -- just coming out, flying at me is not a good way to
02:28:56 25 do this.

02:29:00 1 Why don't you all discuss this overnight and see if
02:29:02 2 you can work it out with everything else?

02:29:04 3 MS. FITZPATRICK: That sounds good,
02:29:05 4 Your Honor.

02:29:09 5 MS. FUMERTON: Your Honor, I just had one
02:29:10 6 other statement for the record.

02:29:11 7 I had cleared this with Mr. Weinberger and he didn't
02:29:13 8 have an issue with it.

02:29:15 9 There was testimony yesterday by Ms. Militello about
02:29:19 10 the amount of time for the delay on the C-II safe. We would
02:29:25 11 request that that be redacted from the public record, just
02:29:28 12 as a safety measure. So it would literally just be only
02:29:32 13 what the time amount is and --

02:29:34 14 THE COURT: And I agree with that.

02:29:36 15 MS. FUMERTON: Mr. Weinberger said that was
02:29:37 16 fine.

02:29:37 17 THE COURT: All right. Fine. We'll do that.

02:29:39 18 So make sure you're doing this, and that it's all --
02:29:45 19 that Mr. Pitts has everything that you're doing because I
02:29:48 20 have not been able to keep track of each and every item.
02:29:52 21 All right.

02:29:53 22 So hopefully you can agree on almost everything and
02:29:56 23 the few things you can't, I'll decide at nine o'clock, and
02:29:59 24 then you'll sit down and make sure that -- was it a disk, a
02:30:05 25 drive, whatever it is, has everything in the correct manner

02:30:09 1 so the jury can access it. That's what I'll need everyone
02:30:12 2 to go over.

02:30:15 3 MR. DELINSKY: Your Honor, may I briefly raise
02:30:17 4 two issues?

02:30:17 5 THE COURT: All right. Yeah.

02:30:19 6 MR. DELINSKY: Your Honor, and I'll put this
02:30:20 7 on file. I've handed it to the parties.

02:30:27 8 Your Honor, I'm going to hand out --

02:30:29 9 THE COURT: Is this something that you can
02:30:30 10 work out overnight or is this something that you've tried --

02:30:33 11 MR. DELINSKY: It's an instructional issue.

02:30:34 12 THE COURT: Well, I haven't gotten to
02:30:37 13 instructions.

02:30:38 14 MR. DELINSKY: I'm handing them up. We
02:30:40 15 haven't put them on file yet. We'll file them today but I
02:30:41 16 just wanted to --

02:30:42 17 THE COURT: It's a little late. I'm
02:30:43 18 finalizing the instructions right now. So I guess I could
02:30:45 19 do it at 9:00 tomorrow morning but I --

02:30:50 20 MR. DELINSKY: It's very brief, Your Honor.
02:30:51 21 It's really one issue.

02:30:58 22 And, Your Honor, what the -- the issue, frankly, was
02:31:00 23 really clarified today in the examination. And what we've
02:31:04 24 done is we put it in red line.

02:31:07 25 I think if we all look at this case with honesty, the

02:31:15 1 timing of the nuisance and the issues associated with the
02:31:18 2 fact that there has to be a nuisance today and the question
02:31:23 3 really being in large part what happened in earlier years
02:31:27 4 long ago, those are really the battle lines in the case.

02:31:30 5 I don't think anyone disputes that the -- that at
02:31:34 6 least one critical caution is did events in '08 and 2010 and
02:31:40 7 2012 contribute to the situation today. It really is where
02:31:43 8 the fight is. I'm not saying it's the whole fight, but it's
02:31:47 9 a big part of the fight.

02:31:48 10 And when we looked at the instructions again last
02:31:50 11 night, we felt that they were subtle on this point and that
02:31:54 12 it would be more fair to include some language, and we've
02:32:00 13 included two additions that are very brief to two of the
02:32:04 14 instructions to clarify that the nuisance has to be today.

02:32:06 15 And then a final instruction, Your Honor, which is --
02:32:10 16 which we wrote, and it's sort of modeled in my own mind
02:32:16 17 after the criminal case, the multiple conspiracy kind of
02:32:19 18 idea, that it has to be the right nuisance.

02:32:25 19 So we just wanted to -- we're certainly not calling on
02:32:30 20 plaintiff -- I don't even know their view. I don't know if
02:32:33 21 they've had a fair opportunity to glean a view but we just
02:32:35 22 wanted to put this issue -- we wanted to present it to you.

02:32:37 23 THE COURT: Well, I don't understand the last
02:32:39 24 one.

02:32:39 25 Let's deal -- I mean, it looks like you're adding in

02:32:44 1 the phrase that the public nuisance must be ongoing today.
02:32:52 2 I think that's in the instructions already.

02:32:54 3 MR. DELINSKY: Your Honor, what's in it, if
02:32:55 4 you look at that same page that we've just your instruction
02:32:58 5 here, right, it's Page 19 at the bottom. In 1 and 2 are the
02:33:04 6 only places we could find with any reference to it and it
02:33:07 7 just says ongoing.

02:33:08 8 And again, Your Honor, we believe that's just too
02:33:10 9 subtle to make the point.

02:33:12 10 THE COURT: Well, there's no doubt the
02:33:14 11 plaintiffs have to prove a public nuisance in each of these
02:33:18 12 counties today. Is that -- I mean, plaintiffs agree on
02:33:22 13 that. Right?

02:33:23 14 MR. WEINBERGER: Right. That it existed -- it
02:33:25 15 has existed in the past and is ongoing.

02:33:28 16 THE COURT: Well, whether or not -- I mean,
02:33:29 17 that's part of your argument, but you have to -- you have to
02:33:33 18 prove, and the jury has to find, that there's a public
02:33:36 19 nuisance today.

02:33:36 20 And I think that's the -- doesn't the verdict form
02:33:41 21 have that? Why isn't -- I don't -- why don't I have the
02:33:48 22 verdict forms?

02:33:53 23 Where are the verdict forms? Can someone --

02:33:59 24 SPECIAL MASTER COHEN: Judge, can I suggest,
02:34:00 25 as we have with -- we've got three people here who worked on

02:34:11 1 this quite a bit, and it's not fair for this to come up
02:34:14 2 without us even seeing it.

02:34:15 3 THE COURT: The verdict form says is a public
02:34:18 4 nuisance in Trumbull County. So it's clear that the jury is
02:34:22 5 charged with finding whether there's a public nuisance now.
02:34:25 6 All right?

02:34:25 7 So, why don't -- again, why don't you all look at
02:34:36 8 this. If you can -- if you all agree on any of these, fine.
02:34:39 9 I don't -- you know, apparently the defendants are proposing
02:34:43 10 to just add in that is ongoing today. I think that's --
02:34:48 11 it's implicit.

02:34:50 12 MR. WEINBERGER: Well, and they've -- they
02:34:52 13 have an entirely independent instruction --

02:34:57 14 THE COURT: Well, I'm not very favorably
02:34:59 15 inclined to that one, but I'll listen to what the plaintiffs
02:35:01 16 have to say.

02:35:02 17 I don't -- I think that's quite -- I think that's
02:35:05 18 confusing and not necessary. All right? But I don't --
02:35:12 19 first glance, I don't have a problem in adding in to the
02:35:17 20 definition of public nuisance that is ongoing today. I
02:35:21 21 think it's implicit in my instructions, but clearly the jury
02:35:24 22 has to find the existence of a public nuisance today.
02:35:29 23 Regardless of when it started, they have to find that it
02:35:31 24 exists today.

02:35:36 25 So why don't you look at this and we'll address this

02:35:39 1 tomorrow morning also. All right.

02:35:47 2 It seems to me we don't need Paragraphs 14 and 15.

02:35:50 3 There have been no admissions and interrogatory answers read
02:35:55 4 that I can recall and no stipulations. Agreed?

02:35:58 5 MR. STOFFELMAYR: That's correct.

02:35:59 6 THE COURT: So we can delete those?

02:36:01 7 MR. STOFFELMAYR: Agreed.

02:36:03 8 MR. MAJORAS: We agree.

02:36:03 9 THE COURT: Plaintiffs agree?

02:36:05 10 MR. WEINBERGER: Yes.

02:36:05 11 THE COURT: All right. All right.

02:36:07 12 So we'll delete those.

02:36:12 13 MR. DELINSKY: Pete, did you have, did you
02:36:13 14 want to ask a question?

02:36:14 15 MR. WEINBERGER: Would you e-mail me this
02:36:16 16 instruction?

02:36:16 17 MR. DELINSKY: We will. We'll separately
02:36:18 18 e-mail it to you right away.

02:36:20 19 MR. WEINBERGER: Okay.

02:36:21 20 THE COURT: All right. So we'll address
02:36:27 21 those -- we'll address this latest suggestion tomorrow at
02:36:31 22 9:00 a.m.

02:36:34 23 MR. DELINSKY: And, Your Honor, the only other
02:36:37 24 issue, and I'm looking to Pete and Laura, Mildred to see if
02:36:42 25 this is an appropriate time since Mark's not here, but we do

02:36:45 1 have a proposal to make on opening statements [sic]. Time
02:36:48 2 is something we discussed yesterday.

02:36:49 3 THE COURT: I was -- that's on my list. Yes.
02:36:53 4 What are you --

02:36:54 5 MR. DELINSKY: We were proposing 3.5 for
02:36:56 6 defendants, 2.5 for plaintiffs, Your Honor.

02:37:09 7 THE COURT: I figured my instructions are
02:37:11 8 about 30 minutes, so that will be a long day.

02:37:18 9 MR. DELINSKY: And, Your Honor, by the way,
02:37:19 10 that's defendants' proposal. I just want to make clear. I
02:37:25 11 didn't mean to speak for plaintiffs, too.

02:37:26 12 THE COURT: Well, what are the plaintiffs --
02:37:27 13 how do the -- does that sit with the plaintiffs?

02:37:30 14 MR. WEINBERGER: Did I hear you say 2.5 for us
02:37:33 15 and 3.5 -- absolutely not, Your Honor.

02:37:37 16 We have the burden of proof. You gave equal time in
02:37:41 17 opening. Of course, they took, substantially more than the
02:37:45 18 time that you had allotted among them.

02:37:49 19 Under -- I mean, I -- you're the Judge, but I think
02:37:52 20 it's highly unfair and prejudicial to us to not get at least
02:37:56 21 equal time.

02:37:58 22 I mean, we -- with our having the burden of proof, we
02:38:01 23 have to -- we have to argue this case as to three separate
02:38:04 24 defendants.

02:38:08 25 MR. DELINSKY: Your Honor, I believe in

02:38:10 1 opening it was 2.5 and 3. I may be wrong, 2.5 for
02:38:16 2 plaintiffs, 3 for defendants.

02:38:17 3 MR. WEINBERGER: Right, and there were four
02:38:18 4 defendants.

02:38:18 5 THE COURT: But there were four defendants.

02:38:21 6 MR. DELINSKY: And I think the complexity here
02:38:23 7 is the ability for plaintiffs just to speak with one voice.

02:38:26 8 We, obviously, don't have that luxury. We can in
02:38:30 9 part, but three different defendants have to stand up and
02:38:32 10 introduce themselves to the jury and make independent
02:38:35 11 arguments. There's transactional time associated with that.

02:38:42 12 THE COURT: Is Mr. Lanier coming back?

02:38:43 13 MR. WEINBERGER: No, he is not.

02:38:44 14 THE COURT: Then Mr. Weinberger, you'll have
02:38:47 15 to -- I mean, I could wait till tomorrow morning, but. . .

02:39:06 16 Well. . . all right. Candidly, I had hoped -- I mean,
02:39:31 17 my plan is to read -- to start off Monday morning reading
02:39:34 18 most of my instructions, starting on Page 1 and going to --
02:39:41 19 I mean, through the substantive instructions, through page
02:39:44 20 what's now 28 and then stopping. And then we'll have the
02:39:47 21 final arguments, and then I read the last few pages after
02:39:50 22 final arrangements.

02:39:58 23 And it was my hope to fit all of the plaintiffs'
02:40:04 24 closing and that first part of my instructions in before
02:40:08 25 lunch and then have the -- after lunch, we'll have the three

02:40:12 1 defendants. Lunch is a little -- you know, go to 12:15,
02:40:23 2 it's not so terrible.

02:40:24 3 I don't really want to go farther than that because
02:40:26 4 it's not fair to the jury or to the last -- or to the
02:40:29 5 speaker. But let me.

02:40:35 6 MR. WEINBERGER: Well, Your Honor, don't
02:40:36 7 forget, we get a rebuttal.

02:40:37 8 THE COURT: Well, the rebuttal I don't mind
02:40:40 9 about. Mr. Lanier is going to have to take a break -- one
02:40:43 10 break during his closing. I'd rather him not having to take
02:40:47 11 two. It just makes it less coherent. So --

02:40:54 12 MR. WEINBERGER: We would propose three hours
02:40:56 13 per side, Your Honor, and --

02:41:02 14 THE COURT: Well, I was thinking that. If you
02:41:04 15 have three hours per side, and I would let the plaintiffs
02:41:07 16 reserve half an hour of their three for rebuttal. I think
02:41:09 17 more than that isn't -- is unfair.

02:41:13 18 So how does that sit, Mr. Weinberger?

02:41:17 19 MR. WEINBERGER: Well, we would request up to
02:41:19 20 45 minutes in rebuttal.

02:41:22 21 THE COURT: Well. . .

02:41:24 22 MR. DELINSKY: Your Honor, I think we'd oppose
02:41:25 23 that, and I say -- I know CVS opposes that.

02:41:29 24 THE COURT: I think half an hour is ample.

02:41:36 25 So I think that would -- we would certainly be done by

02:41:44 1 12:15. So we'll just say three hours per side, and
02:41:56 2 plaintiffs may reserve 30 minutes for rebuttal, 30 of their
02:42:04 3 three hours for rebuttal.

02:42:10 4 So you can tell Mr. Lanier to figure out when's a good
02:42:16 5 time for a break.

02:42:18 6 MR. WEINBERGER: Certainly.

02:42:20 7 THE COURT: I mean, we've been normally
02:42:23 8 breaking around 10:30 but it doesn't have to be on the dot.
02:42:27 9 If it's 10:45, that's fine. I don't want him to be cut off
02:42:30 10 in mid sentence. He should figure it out and then do it.

02:42:33 11 And then after lunch, we'll, you know -- my thought is
02:42:40 12 we'll probably get in -- get two of the defendants'
02:42:44 13 statements and then take the afternoon break and then have
02:42:48 14 the third one and then the closing. Again, I -- that's the
02:42:51 15 idea. We should be able to do that.

02:42:54 16 Okay. All right.

02:43:03 17 The Rule 50 motions, obviously I got the plaintiffs'
02:43:07 18 response. If I didn't think there was sufficient evidence
02:43:13 19 to go to the jury, I would have done something about it. I
02:43:16 20 think there is.

02:43:20 21 I had said that I wanted -- excuse me, the defendants'
02:43:23 22 response by Wednesday. Candidly, if you want to take a
02:43:26 23 little longer, I'm not going to -- you know, it doesn't
02:43:29 24 matter. I'm going to keep it under advisement. If there's
02:43:34 25 a plaintiffs' verdict, I'm sure the defendants will then

02:43:37 1 file a motion for judgment, notwithstanding the verdict.

02:43:41 2 And you would add to what you filed anything additional from
02:43:47 3 the defense side.

02:43:49 4 So then, of course, I'll have to address it. If
02:43:51 5 there's a defense verdict, it becomes moot.

02:43:57 6 So if the defendants want to take longer or candidly
02:44:10 7 -- if you want to just forego a reply and see what happens,
02:44:15 8 that's okay, too.

02:44:16 9 I hadn't thought of that, but it really isn't --
02:44:23 10 really isn't going to change anything. And again, if
02:44:25 11 there's a plaintiffs' verdict, you'll file a new motion
02:44:28 12 which will incorporate the defense case.

02:44:36 13 So what do you think? You know, if you want to save
02:44:38 14 the time and your client's money, that's okay with me.

02:44:41 15 MR. MAJORAS: Your Honor, if we could have a
02:44:42 16 chance to think about that.

02:44:43 17 THE COURT: All right.

02:44:44 18 MR. MAJORAS: We could communicate again
02:44:45 19 through Special Master Cohen.

02:44:49 20 THE COURT: I'm putting it out there. If you
02:44:51 21 want to file something, you can. And if you want to take
02:44:53 22 longer than until Wednesday, that's okay, too.

02:44:56 23 MR. MAJORAS: We will let the Court know. We
02:44:58 24 appreciate that.

02:44:58 25 THE COURT: There's no point, you know, having

02:45:00 1 people stay up, you know. I mean, if you want to take a
02:45:04 2 little longer, that's fine because I'm not -- I'm keeping it
02:45:06 3 under advisement. And if you want to just forego it, not
02:45:11 4 you're waiving it but just, you know, deferring it, what I
02:45:15 5 would say defer it, that's okay, too.

02:45:18 6 MR. MAJORAS: I understand, Your Honor.

02:45:19 7 THE COURT: So why don't you think about it
02:45:20 8 and let me know.

02:45:22 9 MR. MAJORAS: Thank you, Your Honor.

02:45:23 10 MR. DELINSKY: Thank you, Your Honor.

02:45:24 11 And, Your Honor, I would just like to take a moment
02:45:25 12 to, now that the evidence is closed, on behalf of the
02:45:28 13 defense I would imagine on behalf of the two other
02:45:30 14 defendants as well, just renew our directed verdict motions
02:45:33 15 as well.

02:45:34 16 THE COURT: Okay. All right.

02:45:36 17 Now, the jury's going to get the case at the very end
02:45:41 18 of the day Monday. It's been my experience -- I mean, I
02:45:44 19 tell the jurors that once they get the case, the time rules
02:45:51 20 are theirs, not mine. They can stay as long as they want.
02:45:56 21 They come in whenever they want. Just have to tell us. The
02:46:00 22 only rule I have is they don't start deliberating in the
02:46:03 23 morning until everyone's there. If they take a break, they
02:46:05 24 wait until everyone's back.

02:46:09 25 Typically jurors keep the same schedule they've been

02:46:12 1 on and my guess is this one will.

02:46:18 2 I don't bring the jurors in -- into the court in the
02:46:21 3 morning. I just say don't start deliberating until
02:46:24 4 everyone's there. I do, if they break for the day. I
02:46:29 5 always bring them into the courtroom and give them the
02:46:31 6 admonition. I don't require the lawyers to be here. But
02:46:35 7 just so you know, I do bring them in each evening. I think
02:46:38 8 it's -- there's a good reason to do that.

02:46:44 9 So I guess I'll -- we'll just need to know how to
02:46:48 10 reach everyone. We've got everyone's cell phones but
02:46:51 11 they're -- it would not surprise me if we get a question.
02:46:57 12 They're primed to ask questions. Their questions are good
02:47:02 13 ones. And they may have one about the instructions.

02:47:04 14 I'll, obviously, consult with everyone. Some
02:47:07 15 questions I can answer. Some I can't. But I think about
02:47:10 16 each one and, you know, consult with everyone. So I'd want
02:47:14 17 everyone to be -- to be present. And then I always -- if
02:47:18 18 there is a question, I bring the jury in, and I give them
02:47:20 19 the answer or I tell them I can't do anything other than
02:47:24 20 refer you to the instructions, but I always do something.
02:47:28 21 And I typically have the lawyers there unless you don't want
02:47:32 22 to be there. It's, obviously, on the record.

02:47:34 23 So the point is, we need to know how to get a hold of
02:47:38 24 everyone and assemble people pretty quickly.

02:47:41 25 You absolutely do not have to hang around in my

02:47:46 1 courtroom. You may if you want. I don't think -- I'm not
02:47:51 2 going to be using it, but you don't have to. But we just
02:47:55 3 need to know how to get a hold of everyone.

02:47:57 4 MR. DELINSKY: Your Honor, may I just put some
02:48:00 5 logistics questions to you of that ilk?

02:48:01 6 THE COURT: Okay.

02:48:02 7 MR. DELINSKY: You know, would it be
02:48:03 8 appropriate for us to be at our hotels, which would mean we
02:48:06 9 might be 15 minutes away if a call came or would you prefer
02:48:08 10 us to be closer to the area so we can be up here in
02:48:11 11 five minutes or --

02:48:12 12 THE COURT: Well, I don't -- look, everyone's
02:48:15 13 busy. And you need to do a lot of things. I don't think
02:48:17 14 you have to hang around in the courtroom -- in the
02:48:20 15 courthouse, there's no good place to be candidly.

02:48:23 16 MR. DELINSKY: Okay.

02:48:24 17 THE COURT: I mean. . . other than I don't
02:48:28 18 have a problem if people want to work in the courtroom.

02:48:31 19 MR. DELINSKY: Okay.

02:48:36 20 THE COURT: I don't -- obviously don't have
02:48:38 21 another trial this coming week. And all -- I can -- all my
02:48:44 22 proceedings are remote. So I can do them back in my
02:48:46 23 chambers.

02:48:49 24 So, no, you don't have to stay in the courthouse.

02:48:51 25 MR. DELINSKY: Okay.

02:48:52 1 THE COURT: I don't want anyone more than
02:48:53 2 15 minutes away.

02:48:55 3 MR. DELINSKY: Yep.

02:48:56 4 THE COURT: That seems reasonable.

02:48:57 5 MR. DELINSKY: Thank you, Your Honor.

02:48:57 6 THE COURT: If you want to be in your hotels
02:48:59 7 or your war rooms or whenever, that's okay. Just need to
02:49:03 8 know how we can get a hold of everyone quickly.

02:49:05 9 MR. DELINSKY: Understood.

02:49:06 10 Your Honor, next question is, is it appropriate under
02:49:10 11 Your Honor's protocols for us to display to the jury
02:49:15 12 portions of the instructions in closing or --

02:49:18 13 THE COURT: Sure.

02:49:18 14 That's one of the reasons, Mr. Delinsky, that I give
02:49:21 15 the instructions, the substantive ones, before closing
02:49:26 16 arguments.

02:49:26 17 I think it sets the framework. And then counsel may
02:49:29 18 refer to any portion of the instructions you want.

02:49:33 19 MR. DELINSKY: Your Honor --

02:49:34 20 THE COURT: I didn't come up with that. I
02:49:37 21 think Judge Dowd did it that way and I thought it makes a
02:49:40 22 lot of sense. So I copied it.

02:49:43 23 MR. DELINSKY: Last question, Your Honor.

02:49:46 24 Is it appropriate for us to show pages of transcripts
02:49:50 25 if we want to highlight certain testimony? I've seen it go

02:49:53 1 both ways. We'll comply with whatever the rules are. We
02:49:57 2 just want to know.

02:50:00 3 THE COURT: I don't have a problem with it.

02:50:01 4 Mr. Weinberger, do you -- I --

02:50:03 5 MR. WEINBERGER: No issues.

02:50:04 6 THE COURT: Seems to be reasonable.

02:50:10 7 MR. MAJORAS: The real time has been used
02:50:12 8 during the course of the proceedings by everybody. So it
02:50:14 9 will not be a surprise to the jury.

02:50:15 10 THE COURT: Right. So the jury knows it.

02:50:17 11 Right, that's fine.

02:50:19 12 MR. WEINBERGER: As long as we're going to
02:50:20 13 limit it to trial testimony and not deposition testimony.

02:50:22 14 MR. DELINSKY: No, that's correct. That's
02:50:23 15 correct.

02:50:23 16 THE COURT: Right. Right. It shouldn't be
02:50:25 17 deposition testimony.

02:50:26 18 MR. DELINSKY: No.

02:50:27 19 THE COURT: But trial testimony, you want to
02:50:29 20 say, remember what so and so said, here it is, I don't have
02:50:35 21 a problem with that.

02:50:36 22 MR. MAJORAS: Just to be clear, depositions
02:50:37 23 played at trial are fair game.

02:50:39 24 THE COURT: Right. That's the same -- that's
02:50:41 25 the same as trial testimony.

02:50:43 1 MR. MAJORAS: Okay.

02:50:43 2 THE COURT: But I think Mr. Weinberger was
02:50:45 3 referring to prior depositions of testifying witnesses.

02:50:50 4 MR. MAJORAS: We agree.

02:50:51 5 THE COURT: Okay. Yep, that's fine. The
02:50:53 6 jury's used to that.

02:50:54 7 MR. DELINSKY: And, Your Honor, final -- final
02:50:57 8 question on my part is I don't think we have deadlines in
02:51:00 9 place for the exchange of demonstratives to be used in
02:51:04 10 closing like we did in opening.

02:51:06 11 THE COURT: Good point.

02:51:07 12 MR. DELINSKY: And, obviously, nobody wants to
02:51:10 13 be jumping up and down.

02:51:10 14 THE COURT: Agreed. What do you -- what --
02:51:12 15 what do you think makes sense?

02:51:15 16 MR. DELINSKY: Yeah, why don't we -- Laura
02:51:18 17 just proposed we do the same thing we did for openings,
02:51:21 18 which was -- was it 7:00 p.m., 6:00 p.m.? 6:00 p.m. Sunday.

02:51:27 19 THE COURT: 6:00 p.m. That's okay with the
02:51:29 20 plaintiffs?

02:51:30 21 MS. FITZPATRICK: Your Honor, let me check
02:51:31 22 with Mr. Lanier this evening and get back with defense
02:51:34 23 counsel.

02:51:34 24 THE COURT: Why don't you talk about it,
02:51:36 25 confer, and confirm it tomorrow morning when we meet and

02:51:39 1 if --

02:51:40 2 MS. FITZPATRICK: Yes, Your Honor. That
02:51:41 3 sounds good.

02:51:41 4 THE COURT: There should be something, I
02:51:43 5 agree. Okay.

02:51:51 6 Anything else that anyone can think of? All right.

02:51:56 7 Well, I want to compliment all counsel. I had been
02:52:03 8 saying publicly that I had the best lawyers in the country,
02:52:05 9 and I think both sides did a superb job of trying this case.

02:52:10 10 I know everyone was upset with my time limits, but
02:52:16 11 candidly, as a result of those time limits, I know that this
02:52:21 12 jury was able to keep their focus. And I could tell that
02:52:26 13 because even with the last witness, their questions were as
02:52:29 14 good as with the first. And I don't think even this great
02:52:32 15 jury could have kept focus for month after month.

02:52:36 16 And so I think each side got in the evidence, the
02:52:42 17 witnesses, the documents you needed to make your arguments.
02:52:47 18 There weren't wasted or excessive witnesses. So the jury
02:52:52 19 can keep their focus.

02:52:53 20 I have no idea what they're going to do, other than
02:52:56 21 I'm confident it will be an informed verdict because this
02:52:59 22 jury was really paying attention to all this complicated
02:53:04 23 testimony.

02:53:05 24 And so I think, again, both sides did a very, very
02:53:08 25 effective job in a difficult case. And plaintiffs have good

02:53:13 1 arguments. The defendants have good arguments.

02:53:18 2 MR. STOFFELMAYR: Thank you, Judge.

02:53:19 3 MR. MAJORAS: Thank you, Your Honor.

02:53:19 4 MR. DELINSKY: Thank you, Your Honor.

02:53:20 5 THE COURT: We'll see what this jury does.

02:53:22 6 But I -- it will be an informed -- you know, we did a
02:53:25 7 good job picking jurors who could be fair and impartial.
02:53:29 8 Happily, they stayed all healthy, and they clearly kept --
02:53:33 9 kept their attention, which is good.

02:53:36 10 So, all right.

02:53:38 11 MR. WEINBERGER: Your Honor, if I could just
02:53:39 12 say, it's -- usually you say this after the case is over,
02:53:42 13 but since we're -- since you were nice enough to compliment
02:53:45 14 us, both sides, Judge, I just want to say on behalf of the
02:53:50 15 plaintiffs we very much appreciate you and all of the -- all
02:53:53 16 of our colleagues, your colleagues, who have worked so hard
02:53:56 17 on this case through this long trial.

02:53:59 18 We, on behalf of the plaintiffs, I'm sure I speak for
02:54:02 19 the defendants also, although they can say -- they can state
02:54:06 20 for themselves, we very much appreciate the way in which
02:54:08 21 you've diligently and fairly handled this matter, sometimes
02:54:17 22 under difficult circumstances.

02:54:19 23 You know, we -- we're both -- we have advocates on
02:54:24 24 both sides. We don't see eye-to-eye on a lot of things, but
02:54:27 25 I'm sure we can all agree that we appreciate the level

02:54:31 1 playing field that you set and the guardrails that you set
02:54:34 2 for us.

02:54:36 3 And so I just wanted to thank you on behalf of the two
02:54:38 4 counties.

02:54:39 5 THE COURT: You're very welcome.

02:54:40 6 MR. MAJORAS: Your Honor, certainly from the
02:54:42 7 defendants' side, likewise. We want to thank you, thank
02:54:44 8 your staff. In particular, the accessibility of the court
02:54:48 9 and being able to do things quickly. The -- how we've been
02:54:52 10 able to resolve things even during relatively short breaks
02:54:55 11 has been very impressive, and we certainly appreciate that.

02:54:58 12 MR. DELINSKY: And the Court's patience,
02:55:02 13 so. . .

02:55:03 14 MR. STOFFELMAYR: We know we may have tried
02:55:05 15 your patience on one or two occasions, and we appreciate
02:55:07 16 that you didn't seem to hold it against us.

02:55:09 17 THE COURT: I was a litigator. It's a full
02:55:11 18 contact sport. I understand that. And things, you know,
02:55:14 19 can get heated and I -- but I've had a terrific staff.
02:55:20 20 Without them, and my -- David and his team and my staff, I
02:55:25 21 could not have done this alone. That's for sure.

02:55:29 22 But I needed to make decisions quickly to keep it
02:55:31 23 moving, and I tried to make the best ones I could. If I
02:55:36 24 really thought I made a mistake, I changed my mind. But I
02:55:42 25 think collectively, we did a pretty good job.

02:55:44 1 And I -- again, I -- as a case of national importance,
02:55:49 2 I have no idea how this jury is going to, you know, come
02:55:53 3 out. I really don't. And both sides have made very good
02:55:56 4 arguments and have strong evidence and they'll wrestle with
02:56:01 5 it, and I'm confident this -- these 12 people will listen
02:56:04 6 carefully to each other and hopefully -- hopefully come to a
02:56:09 7 verdict. Okay.

02:56:12 8 We'll see everyone tomorrow morning. Have a good
02:56:15 9 evening.

02:56:20 10 MR. STOFFELMAYR: Thank you, Judge.

02:56:20 11 COUNSEL EN MASSE: Thank you, Your Honor.

02:56:20 12 (Proceedings adjourned at 2:56 p.m.)

13

14 DIRECT EXAMINATION OF AMY STOSSEL 6832

15

16 CROSS-EXAMINATION OF AMY STOSSEL 6892

17 REDIRECT EXAMINATION OF AMY STOSSEL 6937

18 RECROSS-EXAMINATION OF AMY STOSSEL 6977

19

20 **C E R T I F I C A T E**

21 I certify that the foregoing is a correct transcript
22 of the record of proceedings in the above-entitled matter
prepared from my stenotype notes.

23 /s/ Heather K. Newman 11-9-2021
24 HEATHER K. NEWMAN, RMR, CRR DATE

25